

# LAWS OF NEW YORK, 2014

## CHAPTER 59

### PART A ONLY

12

#### PART A

13 Section 1. Article 32 of the tax law is REPEALED.

14 § 2. Section 180 of the tax law is REPEALED.

15 § 3. Section 181 of the tax law is REPEALED.

16 § 4. Section 208 of the tax law, as added by chapter 415 of the laws  
17 of 1944, subdivision 1 as amended by chapter 576 of the laws of 1994,  
18 subdivision 1-A as amended by chapter 166 of the laws of 1991, subdivi-  
19 sion 1-B as added by section 45 of part A and paragraph (k) of subdivi-  
20 sion 9 as added by section 46 of part A of chapter 389 of the laws of  
21 1997, subdivision 3, the opening paragraph, subparagraphs 6 and 11 of  
22 paragraph (b), and the opening paragraph of paragraph (g) of subdivision  
23 9 as amended and subdivision 8-B and subparagraph 3-a of paragraph (b)  
24 of subdivision 9 as added by chapter 817 of the laws of 1987, subdivi-  
25 sion 4 as amended by section 1, subdivision 6 as amended by section 2  
26 and subparagraph 2 of paragraph (a) of subdivision 9 as amended by  
27 section 7 of part M of chapter 407 of the laws of 1999, subdivisions 5  
28 and 7, paragraph (a) of subdivision 8-B, subparagraph 10 of paragraph  
29 (b) and paragraph (j) of subdivision 9 as amended, paragraph (d) of  
30 subdivision 8-B and paragraph (c-1) of subdivision 9 as added and para-  
31 graphs (e) and (f) of subdivision 8-B as relettered by chapter 170 of  
32 the laws of 1994, subdivisions 8 and 10 as amended by chapter 133 of the  
33 laws of 1945, subdivision 8-A as added and subparagraph 1 of paragraph  
34 (a) of subdivision 9 as amended by chapter 778 of the laws of 1972,  
35 paragraph (b) of subdivision 8-A and paragraph (i) of subdivision 9 as  
36 amended by chapter 779 of the laws of 1972, subdivision 9 as amended by  
37 chapter 713 of the laws of 1961, paragraph (a) of subdivision 9 as  
38 amended by chapter 203 of the laws of 1962, subparagraphs 5, 9 and 10 of  
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1 paragraph (a) and subparagraphs 8 and 9 of paragraph (b) of subdivision  
2 9 as amended by chapter 61 of the laws of 1989 and paragraph (f) of  
3 subdivision 9 as separately amended by sections 278 and 347 of chapter  
4 61 of the laws of 1989, clause (i) of subparagraph 5 of paragraph (a) of  
5 subdivision 9 as amended by section 2 and subparagraph 20 of paragraph  
6 (b) of subdivision 9 as added by section 3 of part C of chapter 25 of  
7 the laws of 2009, subparagraph 6 of paragraph (a) of subdivision 9 as  
8 added by chapter 895 of the laws of 1975 and as renumbered by chapter  
9 613 of the laws of 1976, subparagraph 7 of paragraph (a) of subdivision  
10 9 as added by chapter 33 of the laws of 1978, subparagraph 8 of para-  
11 graph (a) and subparagraph 7 of paragraph (b) of subdivision 9 as  
12 amended by chapter 639 of the laws of 1986, subparagraph 11 of paragraph  
13 (a) of subdivision 9 as added by chapter 15 of the laws of 1983, subpar-  
14 agraph 12 of paragraph (a), subparagraph 4-a of paragraph (b) and  
15 subparagraph 2 of paragraph (h) of subdivision 9 as amended and subpara-  
16 graph 13 of paragraph (a) of subdivision 9 as added by chapter 760 of  
17 the laws of 1992, subparagraph 14 of paragraph (a) of subdivision 9 as

18 added by section 101 and paragraphs (l) and (m) of subdivision 9 as  
19 added by section 102 of part A of chapter 56 of the laws of 1998,  
20 subparagraph 15 of paragraph (a) of subdivision 9 as amended by section  
21 1 of part ZZ of chapter 63 of the laws of 2003, subparagraph 16 of para-  
22 graph (a) of subdivision 9 as added by section 1 of part K3, subpara-  
23 graph 16 of paragraph (b) of subdivision 9 as added by section 2 of part  
24 K3, subparagraph 17 of paragraph (b) of subdivision 9 as added by  
25 section 2 of part O3, and paragraphs (o), (p) and (q) of subdivision 9  
26 as added by section 3 of part O3 of chapter 62 of the laws of 2003,  
27 subparagraph 18 of paragraph (a) of subdivision 9 as added by section 3  
28 of part C and paragraph (o) of subdivision 9 as amended by section 2 of  
29 part E of chapter 59 of the laws of 2013, subparagraph 3 of paragraph  
30 (b) of subdivision 9 as amended by chapter 895 of the laws of 1975,  
31 subparagraph 4 of paragraph (b) and subparagraph 4 of paragraph (f) of  
32 subdivision 9 as amended by chapter 190 of the laws of 1990, subpara-  
33 graph 15 of paragraph (b) of subdivision 9 as added by chapter 309 of  
34 the laws of 1996, subparagraph 18 of paragraph (b) of subdivision 9 as  
35 added by section 21 of part H of chapter 1 of the laws of 2003, subpara-  
36 graph 19 of paragraph (b) of subdivision 9 as added by section 1 of part  
37 HH1 of chapter 57 of the laws of 2008, paragraphs (c-2) and (c-3) of  
38 subdivision 9 as added by section 10 of part Y of chapter 63 of the laws  
39 of 2000, paragraph (g) of subdivision 9 as added by chapter 178 of the  
40 laws of 1965, subparagraph 1 and clauses (B) and (C) of subparagraph 3  
41 of paragraph (g) of subdivision 9 as amended by chapter 613 of the laws  
42 of 1976, clause (A) of subparagraph 1 of paragraph (g) of subdivision 9  
43 as separately amended by chapters 675 and 836 of the laws of 1977,  
44 clause (B) of subparagraph 1, clause (A) of subparagraph 2 and clause  
45 (A) of subparagraph 3 of paragraph (g) of subdivision 9 as amended by  
46 chapter 675 of the laws of 1977, item 1 of clause (B) of subparagraph 1  
47 of paragraph (g) of subdivision 9 as amended by chapter 972 of the laws  
48 of 1984, clause (B) of subparagraph 2 of paragraph (g) of subdivision 9  
49 as amended by chapter 365 of the laws of 1979, clause (C) of subpara-  
50 graph 2 of paragraph (g) of subdivision 9 as amended by chapter 1005 of  
51 the laws of 1970, paragraph (h) of subdivision 9 as amended by chapter  
52 606 of the laws of 1984, paragraph (n) of subdivision 9 as added by  
53 section 1 of part O of chapter 85 of the laws of 2002, subdivision 12 as  
54 added by chapter 828 of the laws of 1977, subdivision 19 as added by  
55 chapter 681 of the laws of 1997, is amended to read as follows:

56 § 208. Definitions. As used in this article:

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1 1. The term "corporation" includes (a) an association within the mean-  
2 ing of paragraph three of subsection (a) of section seventy-seven  
3 hundred one of the internal revenue code (including a limited liability  
4 company), (b) a joint-stock company or association, (c) a publicly trad-  
5 ed partnership treated as a corporation for purposes of the internal  
6 revenue code pursuant to section seventy-seven hundred four thereof and  
7 (d) any business conducted by a trustee or trustees wherein interest or  
8 ownership is evidenced by certificate or other written instrument.  
9 "DISC" and "former DISC" mean any corporation which meets the require-  
10 ments of subsection (a) of section nine hundred ninety-two of the inter-  
11 nal revenue code[+].

12 1-A. The term "New York S corporation" means, with respect to any  
13 taxable year, a corporation subject to tax under this article for which  
14 an election is in effect pursuant to subsection (a) of section six  
15 hundred sixty of this chapter for such year, any such year shall be  
16 denominated a "New York S year", and such election shall be denominated  
17 a "New York S election". The term "New York C corporation" means, with  
18 respect to any taxable year, a corporation subject to tax under this  
19 article which is not a New York S corporation, and any such year shall  
20 be denominated a "New York C year". The term "termination year" means  
21 any taxable year of a corporation during which the New York S election  
22 terminates on a day other than the first day of such year. The portion

23 of the taxable year ending before the first day for which such termi-  
24 nation is effective shall be denominated the "S short year", and the  
25 portion of such year beginning on such first day shall be denominated  
26 the "C short year". The term "New York S termination year" means any  
27 termination year which is not also an S termination year for federal  
28 purposes.

29 1-B. The term "QSSS" means a corporation which is a qualified subchap-  
30 ter S subsidiary as defined in subparagraph (B) of paragraph three of  
31 subsection (b) of section thirteen hundred sixty-one of the internal  
32 revenue code. The term "exempt QSSS" means a QSSS exempt from tax under  
33 this article as provided in paragraph (k) of subdivision nine of this  
34 section, or a QSSS described in subclause (i) of clause (B) of subpara-  
35 graph two of paragraph (k) of subdivision nine of this section, wherein  
36 the parent corporation of the QSSS is subject to tax under this article,  
37 and the assets, liabilities, income and deductions of the QSSS are  
38 treated as the assets, liabilities, income and deductions of the parent  
39 corporation. Where a QSSS is an exempt QSSS, then for all purposes under  
40 this article:

41 (a) the assets, liabilities, income, deductions, property, payroll,  
42 receipts, capital, credits, and all other tax attributes and elements of  
43 economic activity of the QSSS shall be deemed to be those of the parent  
44 corporation,

45 (b) the stocks, bonds and other securities issued by, and any indebt-  
46 edness from, the QSSS shall not be [~~subsidiary~~], investment or business  
47 capital of the parent corporation,

48 (c) transactions between the parent corporation and the QSSS, includ-  
49 ing the payment of interest and dividends, shall not be taken into  
50 account, and

51 (d) general executive officers of the QSSS shall be deemed to be  
52 general executive officers of the parent corporation.

53 2. The term "taxpayer" means any corporation subject to tax under this  
54 article[7].

55 3. The term "subsidiary" means a corporation of which over fifty  
56 percent of the number of shares of stock entitling the holders thereof  
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1 to vote for the election of directors or trustees is owned by the  
2 taxpayer[7].

3 4. The term [~~"subsidiary capital" means investments in the stock of~~  
4 ~~subsidiaries and any indebtedness from subsidiaries, exclusive of~~  
5 ~~accounts receivable acquired in the ordinary course of trade or business~~  
6 ~~for services rendered or for sales of property held primarily for sale~~  
7 ~~to customers, whether or not evidenced by written instrument, on which~~  
8 ~~interest is not claimed and deducted by the subsidiary for purposes of~~  
9 ~~taxation under article nine A, thirty two or thirty three of this chap-~~  
10 ~~ter, provided, however, that, in the discretion of the commissioner,~~  
11 ~~there shall be deducted from subsidiary capital any liabilities which~~  
12 ~~are directly or indirectly attributable to subsidiary capital]~~ "stock"  
13 means an interest in a corporation that is treated as equity for federal  
14 income tax purposes.

15 5. (a) The term "investment capital" means investments in stocks[7  
16 ~~bonds and other securities, corporate and governmental~~], that are held  
17 by the taxpayer for more than six consecutive months but are not held  
18 for sale to customers in the regular course of business, [exclusive of  
19 subsidiary capital] or, if the taxpayer makes the election provided for  
20 in subparagraph one of paragraph (a) of subdivision five of section two  
21 hundred ten-A of this article, are not qualified financial instruments  
22 as described in subdivision five of section two hundred ten-A of this  
23 article. Stock in a corporation that is conducting a unitary business  
24 with the taxpayer, stock in a corporation that is included in a combined  
25 report with the taxpayer pursuant to the commonly owned group election  
26 in subdivision three of section two hundred ten-C of this article, and  
27 stock issued by the taxpayer[7, ~~provided, however, that, in the~~

28 ~~discretion of the commissioner, there]~~ shall not constitute investment  
29 capital. For purposes of this subdivision, if the taxpayer owns or  
30 controls, directly or indirectly, less than twenty percent of the voting  
31 power of the stock of a corporation, that corporation will be presumed  
32 to be conducting a business that is not unitary with the business of the  
33 taxpayer.

34 (b) There shall be deducted from investment capital any liabilities  
35 which are directly or indirectly attributable to investment capital[~~+~~  
36 and provided, further, that investment]. If the amount of those liabil-  
37 ities exceeds the amount of investment capital, the amount of investment  
38 capital will be zero.

39 (c) Investment capital shall not include any such investments the  
40 income from which is excluded from entire net income pursuant to the  
41 provisions of paragraph (c-1) of subdivision nine of this section, and  
42 that investment capital shall be computed without regard to liabilities  
43 directly or indirectly attributable to such investments, but only if air  
44 carriers organized in the United States and operating in the foreign  
45 country or countries in which the taxpayer has its major base of oper-  
46 ations and in which it is organized, resident or headquartered (if not  
47 in the same country as its major base of operations) are not subject to  
48 any tax based on or measured by capital imposed by such foreign country  
49 or countries or any political subdivision thereof, or if taxed, are  
50 provided an exemption, equivalent to that provided for herein, from any  
51 tax based on or measured by capital imposed by such foreign country or  
52 countries and from any such tax imposed by any political subdivision  
53 thereof[~~+~~].

54 (d) If a taxpayer acquires stock during the second half of its taxable  
55 year and owns that stock on the last day of the taxable year, it will be  
56 presumed that the taxpayer held that stock for more than six consecutive

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1 months during the taxable year. However, if the taxpayer does not in  
2 fact hold that stock for more than six consecutive months, the taxpayer  
3 must increase its total business capital in the immediately succeeding  
4 taxable year by the amount included in investment capital for that  
5 stock, net of any liabilities attributable to that stock computed as  
6 provided in paragraph (b) of this subdivision and must increase its  
7 business income in the immediately succeeding taxable year by the amount  
8 of income and net gains (but not less than zero) from that stock  
9 included in investment income, less any interest deductions directly or  
10 indirectly attributable to that stock, as provided in subdivision six of  
11 this section.

12 (e) When income or gain from a debt obligation or other security  
13 cannot be apportioned to the state using the business allocation  
14 percentage as a result of United States constitutional principles, the  
15 debt obligation or other security will be included in investment capi-  
16 tal.

17 (f) For purposes of determining whether a taxpayer has held a security  
18 for more than six consecutive months, the commissioner shall take into  
19 account offsetting positions the taxpayer takes in such or similar secu-  
20 rities.

21 6. (a) The term "investment income" means income, including capital  
22 gains in excess of capital losses, from investment capital, to the  
23 extent included in computing entire net income, less, [~~(a)~~] (i) in the  
24 discretion of the commissioner, any interest deductions allowable in  
25 computing entire net income which are directly or indirectly attribut-  
26 able to investment capital or investment income, and [~~(b)~~ such portion  
27 of any net operating loss deduction allowable in computing entire net  
28 income, as the investment income, before such deduction, bears to entire  
29 net income, before such deduction,] (ii) the taxpayer's loss, deduction  
30 and/or expense attributable to any transaction, or series of trans-  
31 actions, entered into to manage the risk of price changes or currency  
32 fluctuations with respect to any item of investment capital that is held

33 or to be held by the taxpayer, or the aggregate investment capital that  
34 is held or to be held by the taxpayer, if all of the risk, or all but a  
35 de minimis amount of the risk, is with respect to investment capital,  
36 provided, however, that in no case shall investment income exceed entire  
37 net income[+]. If the amount subtracted under subparagraph (i) or  
38 subparagraph (ii) of this paragraph or under both of those subparagraphs  
39 exceeds investment income, the excess of such amount over investment  
40 income must be added back to entire net income.

41 (b) In lieu of subtracting from investment income the amount of those  
42 interest deductions, the taxpayer may elect to reduce its total invest-  
43 ment income by forty percent. If the taxpayer makes this election, the  
44 taxpayer must also make the elections provided for in paragraphs (b) and  
45 (c) of subdivision six-a of this section. A taxpayer which does not make  
46 this election because it has no investment capital will not be precluded  
47 from making those other elections.

48 (c) Investment income shall not include any amount treated as divi-  
49 dends pursuant to section seventy-eight of the internal revenue code.

50 6-a. (a) The term "other exempt income" means the sum of exempt CFC  
51 income and exempt unitary corporation dividends.

52 (b) "Exempt CFC income" means the income required to be included in  
53 the taxpayer's federal gross income pursuant to subsection (a) of  
54 section 951 of the internal revenue code, received from a corporation  
55 that is conducting a unitary business with the taxpayer but is not  
56 included in a combined report with the taxpayer, less, in the discretion

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1 of the commissioner, any interest deductions directly or indirectly  
2 attributable to that income. In lieu of subtracting from its exempt CFC  
3 income the amount of those interest deductions, the taxpayer may elect  
4 to reduce its total exempt CFC income by forty percent. If the taxpayer  
5 makes this election, the taxpayer must also make the elections provided  
6 for in paragraph (b) of subdivision six of this section and paragraph  
7 (c) of this subdivision. A taxpayer which does not make this election  
8 because it has no exempt CFC income will not be precluded from making  
9 those other elections.

10 (c) "Exempt unitary corporation dividends" means those dividends from  
11 a corporation that is conducting a unitary business with the taxpayer  
12 but is not included in a combined report with the taxpayer, less, in the  
13 discretion of the commissioner, any interest deductions directly or  
14 indirectly attributable to such income. Other than dividend income  
15 received from corporations that are taxable under a franchise tax  
16 imposed by article nine or article thirty-three of this chapter or would  
17 be taxable under a franchise tax imposed by article nine or article  
18 thirty-three of this chapter if subject to tax, in lieu of subtracting  
19 from this dividend income those interest deductions, the taxpayer may  
20 elect to reduce the total amount of this dividend income by forty  
21 percent. If the taxpayer makes this election, the taxpayer must also  
22 make the elections provided for in paragraph (b) of subdivision six of  
23 this section and paragraph (b) of this subdivision. A taxpayer which  
24 does not make this election because it has not received any exempt  
25 unitary corporation dividends or is precluded from making this election  
26 for dividends received from corporations taxable under a franchise tax  
27 imposed by article nine or article thirty-three of this chapter or would  
28 be taxable under a franchise tax imposed by article nine or article  
29 thirty-three of this chapter if subject to tax will not be precluded  
30 from making those other elections.

31 (d) If the taxpayer attributes interest deductions to other exempt  
32 income and the amount subtracted exceeds other exempt income, the excess  
33 of the interest deductions over other exempt income must be added back  
34 to entire net income. In no case shall other exempt income exceed entire  
35 net income.

36 (e) Other exempt income shall not include any amount treated as divi-  
37 dends pursuant to section seventy-eight of the internal revenue code.

38 7. (a) The term "business capital" means all assets, other than  
39 [~~subsidiary capital,~~] investment capital and stock issued by the taxpay-  
40 er, less liabilities not deducted from [~~subsidiary or~~] investment capi-  
41 tal [~~except that cash on hand and on deposit shall be treated as invest-~~  
42 ~~ment capital or as business capital as the taxpayer may elect~~].  
43 Business capital shall include only those assets the income, loss or  
44 expense of which are properly reflected (or would have been properly  
45 reflected if not fully depreciated or expensed or depreciated or  
46 expensed to a nominal amount) in the computation of entire net income  
47 for the taxable year.

48 (b) Provided, however, "business capital" shall not include assets to  
49 the extent employed for the purpose of generating income which is  
50 excluded from entire net income pursuant to the provisions of paragraph  
51 (c-1) of subdivision nine of this section and shall be computed without  
52 regard to liabilities directly or indirectly attributable to such  
53 assets, but only if air carriers organized in the United States and  
54 operating in the foreign country or countries in which the taxpayer has  
55 its major base of operations and in which it is organized, resident or  
56 headquartered (if not in the same country as its major base of oper-  
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1 ations) are not subject to any tax based on or measured by capital  
2 imposed by such foreign country or countries or any political subdivi-  
3 sion thereof, or if taxed, are provided an exemption, equivalent to that  
4 provided for herein, from any tax based on or measured by capital  
5 imposed by such foreign country or countries and from any such tax  
6 imposed by any political subdivision thereof[+].

7 8. The term "business income" means entire net income minus investment  
8 income[+] and other exempt income. In no event shall the sum of invest-  
9 ment income and other exempt income exceed entire net income. If the  
10 taxpayer makes the election provided for in subparagraph one of para-  
11 graph (a) of subdivision five of section two hundred ten-A of this arti-  
12 cle, then all income from qualified financial instruments shall consti-  
13 tute business income.

14 8-A. Provided, however, that with respect to a DISC or a former DISC,  
15 the following provisions shall apply:

16 (a) investments in the stocks, bonds or other securities of a DISC or  
17 any indebtedness from a DISC shall not be treated as [~~either subsidiary~~  
18 ~~capital or~~] investment capital under [~~subdivisions four or~~] subdivision  
19 five of this section,

20 (b) any amounts deemed distributed from a DISC or a former DISC which  
21 are taxable as dividends pursuant to subsection (b) of section nine  
22 hundred ninety-five of the internal revenue code of nineteen hundred  
23 fifty-four shall be treated as business income, except any such amounts  
24 from a former DISC attributable to amounts includible in a taxpayer's  
25 entire net income for a prior taxable year under subparagraph (B) of  
26 paragraph (i) of subdivision nine of this section shall be excluded from  
27 entire net income,

28 (c) any gain recognized for federal income tax purposes on the dispo-  
29 sition of stock in a DISC, and any gain recognized on the disposition of  
30 stock in a former DISC, includible in gross income as a dividend pursu-  
31 ant to subsection (c) of section nine hundred ninety-five of the inter-  
32 nal revenue code of nineteen hundred fifty-four, shall be treated as  
33 business income, and

34 (d) except as provided in paragraph (i) of subdivision nine of this  
35 section, any actual distribution from a DISC or a former DISC shall be  
36 treated as business income except an actual distribution which for  
37 federal income tax purposes is treated as made out of "other earnings  
38 and profits" under section nine hundred ninety-six of the internal  
39 revenue code of nineteen hundred fifty-four, in which case such actual  
40 distribution shall be treated as [~~either subsidiary income or~~] invest-  
41 ment income under this article.

42 [~~8-B. (a) The term "minimum taxable income" shall mean the entire net~~

43 ~~income of the taxpayer for the taxable year:~~

44 ~~(1) increased by the amount of the federal items of tax preference set~~  
45 ~~forth in section fifty seven of the internal revenue code (with the~~  
46 ~~modifications set forth in paragraph (b) of this subdivision), which~~  
47 ~~items of tax preference shall have the same meaning and be computed in~~  
48 ~~the same manner as under section fifty-seven of the internal revenue~~  
49 ~~code,~~

50 ~~(2) determined with the federal adjustments described in paragraph (c)~~  
51 ~~of this subdivision, which adjustments shall have the same meaning and~~  
52 ~~be computed in the same manner as under sections fifty-six and fifty-~~  
53 ~~eight of the internal revenue code,~~

54 ~~(3) increased by the net operating loss deduction otherwise allowed~~  
55 ~~under paragraph (f) of subdivision nine of this section, and~~

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1 ~~(4) reduced, for taxable years beginning after nineteen hundred nine-~~  
2 ~~ty-three, by the alternative net operating loss deduction, as defined in~~  
3 ~~paragraph (d) of this subdivision.~~

4 ~~(b) The federal items of tax preference referred to hereinabove shall~~  
5 ~~be modified by deducting "tax-exempt interest" and "accelerated depreci-~~  
6 ~~ation or amortization on certain property placed in service before Janu-~~  
7 ~~ary 1, 1987", as determined under paragraphs five and seven of~~  
8 ~~subsection (a) of section fifty-seven of the internal revenue code.~~

9 ~~(c) The adjustments referred to hereinabove shall be:~~

10 ~~(1) "Depreciation" as determined under paragraph one of subsection (a)~~  
11 ~~of section fifty-six of the internal revenue code. For purposes of this~~  
12 ~~subparagraph, the depreciation item of adjustment provided for here~~  
13 ~~shall not include any amount attributable to property for which the tax~~  
14 ~~benefits of the accelerated cost recovery system are not available under~~  
15 ~~this article by reason of subparagraph ten of paragraph (b) of subdivi-~~  
16 ~~sion nine of this section;~~

17 ~~(2) "Mining exploration and development costs" as determined under~~  
18 ~~paragraph two of subsection (a) of section fifty-six of the internal~~  
19 ~~revenue code;~~

20 ~~(3) "Treatment of certain long-term contracts" as determined under~~  
21 ~~paragraph three of subsection (a) of section fifty-six of the internal~~  
22 ~~revenue code;~~

23 ~~(4) "Installment sales of certain property" as determined under para-~~  
24 ~~graph six of subsection (a) of section fifty-six of the internal revenue~~  
25 ~~code;~~

26 ~~(5) "Circulation expenditures of personal holding companies" as deter-~~  
27 ~~mined under subparagraph (C) of paragraph two of subsection (b) of~~  
28 ~~section fifty-six of the internal revenue code;~~

29 ~~(6) "Merchant marine capital construction funds" as determined under~~  
30 ~~paragraph two of subsection (c) of section fifty-six of the internal~~  
31 ~~revenue code;~~

32 ~~(7) "Disallowance of passive activity loss" as determined under~~  
33 ~~subsection (b) of section fifty-eight of the internal revenue code; and~~

34 ~~(8) "Adjusted basis", as it appears in paragraph seven of subsection~~  
35 ~~(a) of section fifty-six of the internal revenue code, but without~~  
36 ~~taking into account the references therein to paragraph five of~~  
37 ~~subsection (a) of section fifty-six of the internal revenue code.~~

38 ~~(d) The term "alternative net operating loss deduction" means the net~~  
39 ~~operating loss deduction allowed for the taxable year under paragraph~~  
40 ~~(f) of subdivision nine of this section, except as provided herein.~~

41 ~~(1) (A) The net operating loss for any year beginning after nineteen~~  
42 ~~hundred eighty-nine which is included in determining such deduction~~  
43 ~~shall be determined with the adjustments provided in subparagraph two of~~  
44 ~~paragraph (a) of this subdivision, and shall be reduced by the items of~~  
45 ~~tax preference determined under subparagraph one of paragraph (a) of~~  
46 ~~this subdivision, attributable to such year. An item of tax preference~~  
47 ~~shall be taken into account only to the extent such item increased the~~  
48 ~~amount of the net operating loss for the taxable year under paragraph~~

49 ~~(f) of subdivision nine of this section.~~

50 ~~(B) In the case of loss years beginning before nineteen hundred nine-~~  
51 ~~ty, the amount of the net operating loss which may be carried over to~~  
52 ~~taxable years beginning after nineteen hundred eighty-nine shall be~~  
53 ~~equal to an amount which may be carried from the loss year to the first~~  
54 ~~taxable year of the taxpayer beginning after nineteen hundred eighty-~~  
55 ~~nine.~~

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1 ~~(2) In determining the amount of such deduction, loss carryforwards~~  
2 ~~and carrybacks shall, subject to the provisions of subparagraph five of~~  
3 ~~paragraph (f) of subdivision nine of this section, be computed in the~~  
4 ~~manner set forth in paragraph two of subsection (b) of section one~~  
5 ~~hundred seventy-two of the internal revenue code, except that, for the~~  
6 ~~reference therein to taxable income, there shall be substituted the~~  
7 ~~phrase "ninety percent of minimum taxable income determined without~~  
8 ~~regard to the alternative net operating loss deduction".~~

9 ~~(3) The amount of such deduction shall not exceed ninety percent of~~  
10 ~~minimum taxable income determined without regard to such deduction,~~  
11 ~~provided, however, the term "ninety percent" shall be read as "forty-~~  
12 ~~five percent" with respect to taxable years beginning in nineteen~~  
13 ~~hundred ninety-four.~~

14 ~~(e) The tax commission may, whenever necessary in order to properly~~  
15 ~~reflect the minimum taxable income of any taxpayer, determine the year~~  
16 ~~or period in which any item of income or deduction shall be included,~~  
17 ~~without regard to the method of accounting employed by the taxpayer.~~

18 ~~(f) If the period covered by a report under this article is other than~~  
19 ~~the period covered by the report to the United States treasury depart-~~  
20 ~~ment, the minimum taxable income shall be appropriately modified pursu-~~  
21 ~~ant to regulations promulgated by the tax commission.]~~

22 9. The term "entire net income" means total net income from all sourc-  
23 es, which shall be presumably the same as the entire taxable income  
24 [~~(but not alternative minimum taxable income)], which, except as herein-~~

25 after provided in this subdivision,  
26 (i) [which] the taxpayer is required to report to the United States  
27 treasury department, or

28 (ii) [which] the taxpayer would have been required to report to the  
29 United States treasury department if it had not made an election under  
30 subchapter s of chapter one of the internal revenue code, or

31 (iii) [which] the taxpayer, in the case of a corporation which is  
32 exempt from federal income tax (other than the tax on unrelated business  
33 taxable income imposed under section 511 of the internal revenue code)  
34 but which is subject to tax under this article, would have been required  
35 to report to the United States treasury department but for such  
36 exemption, [~~except as hereinafter provided, and subject to any modifica-~~  
37 ~~tion required by paragraphs (d) and (e) of subdivision three of section~~  
38 ~~two hundred ten of this article] or~~

39 (iv) in the case of an alien corporation that under any provision of  
40 the internal revenue code is not treated as a "domestic corporation" as  
41 defined in section seven thousand seven hundred one of such code is  
42 effectively connected with the conduct of a trade or business within the  
43 United States as determined under section 882 of the Internal Revenue  
44 Code.

45 (a) Entire net income shall not include:

46 [~~(1) income, gains and losses from subsidiary capital which do not~~  
47 ~~include the amount of a recovery in respect of any war loss except for~~  
48 ~~such amounts from a former DISC which are treated as business income~~  
49 ~~under subdivision eight-A of this section,~~

50 ~~(2) fifty percent of dividends (A) other than from subsidiaries, and~~  
51 ~~(B) other than amounts treated as business income under subdivision~~  
52 ~~eight-A of this section, on shares of stock which conform to the~~  
53 ~~requirements of subsection (c) of section two hundred forty-six of the~~  
54 ~~internal revenue code.]~~



1 (4) income and deductions with respect to amounts received from school  
2 districts and from corporations and associations, organized and operated  
3 exclusively for religious, charitable or educational purposes, no part  
4 of the net earnings of which inures to the benefit of any private share-  
5 holder or individual, for the operation of school buses,

6 (5) (i) any refund or credit of a tax imposed under this article,  
7 article twenty-three, or former article thirty-two of this chapter, for  
8 which tax no exclusion or deduction was allowed in determining the  
9 taxpayer's entire net income under this article, article twenty-three,  
10 or former article thirty-two of this chapter for any prior year, (ii) a  
11 refund or credit of general corporation tax allowed by subdivision elev-  
12 en of section 11-604 of the administrative code of the city of New York,  
13 or (iii) any refund or credit of a tax imposed under sections one  
14 hundred eighty-three, one hundred eighty-three-a, one hundred eighty-  
15 four or one hundred eighty-four-a of this chapter, and

16 (6) any amount treated as dividends pursuant to section seventy-eight  
17 of the internal revenue code [~~and not otherwise deductible under subpar-~~  
18 ~~agraphs one and two of this paragraph];~~

19 (7) that portion of wages and salaries paid or incurred for the taxa-  
20 ble year for which a deduction is not allowed pursuant to the provisions  
21 of section two hundred eighty-C of the internal revenue code.

22 [~~(8) in the case of a taxpayer who is separately or as a partner of a~~  
23 ~~partnership doing an insurance business as a member of the New York~~  
24 ~~insurance exchange described in section six thousand two hundred one of~~  
25 ~~the insurance law, any item of income, gain, loss or deduction of such~~  
26 ~~business which is the taxpayer's distributive or pro rata share for~~  
27 ~~federal income tax purposes or which the taxpayer is required to take~~  
28 ~~into account separately for federal income tax purposes.]~~

29 (9) for taxable years beginning after December thirty-first, nineteen  
30 hundred eighty-one, except with respect to property which is a qualified  
31 mass commuting vehicle described in subparagraph (D) of paragraph eight  
32 of subsection (f) of section one hundred sixty-eight of the internal  
33 revenue code (relating to qualified mass commuting vehicles) and proper-  
34 ty of a taxpayer principally engaged in the conduct of aviation (other  
35 than air freight forwarders acting as principal and like indirect air  
36 carriers) which is placed in service before taxable years beginning in  
37 nineteen hundred eighty-nine, any amount which is included in the  
38 taxpayer's federal taxable income solely as a result of an election made  
39 pursuant to the provisions of such paragraph eight as it was in effect  
40 for agreements entered into prior to January first, nineteen hundred  
41 eighty-four;

42 (10) for taxable years beginning after December thirty-first, nineteen  
43 hundred eighty-one, except with respect to property which is a qualified  
44 mass commuting vehicle described in subparagraph (D) of paragraph eight  
45 of subsection (f) of section one hundred sixty-eight of the internal  
46 revenue code (relating to qualified mass commuting vehicles) and proper-  
47 ty of a taxpayer principally engaged in the conduct of aviation (other  
48 than air freight forwarders acting as principal and like indirect air  
49 carriers) which is placed in service before taxable years beginning in  
50 nineteen hundred eighty-nine, any amount which the taxpayer could have  
51 excluded from federal taxable income had it not made the election  
52 provided for in such paragraph eight as it was in effect for agreements  
53 entered into prior to January first, nineteen hundred eighty-four;

54 (11) the amount deductible pursuant to paragraph (j) of this subdivi-  
55 sion; and

1 (12) upon the disposition of property to which paragraph (j) of this  
2 subdivision applies, the amount, if any, by which the aggregate of the  
3 amounts described in subparagraph ten of paragraph (b) of this subdivi-

4 sion attributable to such property exceeds the aggregate of the amounts  
5 described in paragraph (j) of this subdivision attributable to such  
6 property; and

7 ~~[(13) if the added tax provided for in either (i) former subdivision~~  
8 ~~two of section one hundred eighty-two of this chapter (relating to real~~  
9 ~~estate corporations) or (ii) former subdivision one-a of section two~~  
10 ~~hundred nine of this chapter (relating to real estate corporations) has~~  
11 ~~been imposed upon the taxpayer, any income which has been used in~~  
12 ~~computing such tax.]~~

13 (14) The amount deductible pursuant to paragraph (l) of this  
14 subsection subdivision.

15 ~~[(15) In the case of an attorney-in-fact, with respect to which a~~  
16 ~~mutual insurance company, which is an interinsurer or a reciprocal~~  
17 ~~insurer and is subject to tax under subdivision (a) of section fifteen~~  
18 ~~hundred ten of this chapter, has made the election provided for under~~  
19 ~~section eight hundred thirty-five of the Internal Revenue Code, an~~  
20 ~~amount equal to the excess, if any, of the amounts paid or incurred by~~  
21 ~~such interinsurer or reciprocal insurer in the taxable year to the~~  
22 ~~attorney-in-fact over the deduction allowed to such interinsurer or~~  
23 ~~reciprocal insurer with respect to amounts paid or incurred in the taxa-~~  
24 ~~ble year to the attorney-in-fact under subsection (b) of such section~~  
25 ~~eight hundred thirty-five of the Internal Revenue Code.]~~

26 (16) In the case of a taxpayer subject to the modification provided by  
27 subparagraph sixteen of paragraph (b) of this subdivision, the amount  
28 required to be recaptured pursuant to subsection (d) of section 179 of  
29 the internal revenue code with respect to property upon which such  
30 modification was based.

31 (17) for taxable years beginning after December thirty-first, two  
32 thousand two, the amount deductible pursuant to paragraph (n-1) of this  
33 subdivision.

34 (18) the amount of income or gain included in federal taxable income  
35 of a taxpayer that is a partner in a qualified entity or is a qualified  
36 entity that is located both within and without a New York state inno-  
37 vation hot spot, to the extent that the income or gain is attributable  
38 to the operations of a qualified entity at or as part of the New York  
39 state innovation hot spot as provided in section thirty-eight of this  
40 chapter.

41 (19) the amount computed pursuant to paragraph (r), (s) or (t) of this  
42 subdivision, but only the amount determined pursuant to one of such  
43 paragraphs.

44 (b) Entire net income shall be determined without the exclusion,  
45 deduction or credit of:

46 (1) ~~[the amount of any specific exemption or credit allowed in any law~~  
47 ~~of the United States imposing any tax on or measured by the income of~~  
48 ~~corporations,]~~ in the case of an alien corporation that under any  
49 provision of the internal revenue code is not treated as a "domestic  
50 corporation" as defined in section seven thousand seven hundred one of  
51 such code, (i) any part of any income from dividends or interest on any  
52 kind of stock, securities or indebtedness, but only if such income is  
53 treated as effectively connected with the conduct of a trade or business  
54 in the United States pursuant to section 864 of the internal revenue  
55 code, (ii) any income exempt from federal taxable income under any trea-  
56 ty obligation of the United States, but only if such income would be

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1 treated as effectively connected in absence of such exemption provided  
2 that such treaty obligation does not preclude the taxation of such  
3 income by a state, or (iii) any income which would be treated as effec-  
4 tively connected if such income were not excluded from gross income  
5 pursuant to subsection (a) of section 103 of the internal revenue code;

6 (2) any part of any income from dividends or interest on any kind of  
7 stock, securities or indebtedness, ~~[except as provided in clauses (1)-~~  
8 ~~and (2) of paragraph (a) hereof,]~~

9 (3) taxes on or measured by profits or income paid or accrued to the  
10 United States[, or any of its possessions [~~or to any foreign country~~],  
11 territories or commonwealths, including taxes in lieu of any of the  
12 foregoing taxes otherwise generally imposed by [~~any foreign country or~~  
13 ~~by~~] any possession, territory or commonwealth of the United States,

14 (3-a) taxes on or measured by profits or income, or which include  
15 profits or income as a measure, paid or accrued to any other state of  
16 the United States, or any political subdivision thereof, or to the  
17 District of Columbia, including taxes expressly in lieu of any of the  
18 foregoing taxes otherwise generally imposed by any other state of the  
19 United States, or any political subdivision thereof, or the District of  
20 Columbia;

21 (4) taxes imposed under this article and article thirty-two as in  
22 effect on December thirty-first, two thousand fourteen and sections one  
23 hundred eighty-three, one hundred eighty-three-a, one hundred eighty-  
24 four and one hundred eighty-four-a of this chapter,

25 (4-a) (A) [~~the entire amount allowable as an exclusion or deduction for~~  
26 ~~stock transfer taxes imposed by article twelve of this chapter in deter-~~  
27 ~~mining the entire taxable income which the taxpayer is required to~~  
28 ~~report to the United States treasury department but only to the extent~~  
29 ~~that such taxes are incurred and paid in market making transactions,~~  
30 ~~(B)~~] in those instances where a credit for the special additional mort-  
31 gage recording tax credit is allowed under [~~paragraph (a) of~~] subdivi-  
32 sion [~~seventeen~~] nine of section two hundred [~~ten~~] ten-B of this arti-  
33 cle, the amount allowed as an exclusion or deduction for the special  
34 additional mortgage recording tax imposed by subdivision one-a of  
35 section two hundred fifty-three of this chapter in determining the  
36 entire taxable income which the taxpayer is required to report to the  
37 United States treasury department, and [~~(C)~~] (B) unless the credit  
38 allowed pursuant to subdivision [~~seventeen~~] nine of section two hundred  
39 [~~ten~~] ten-B of this article is reflected in the computation of the gain  
40 or loss so as to result in an increase in such gain or decrease of such  
41 loss, for federal income tax purposes, from the sale or other disposi-  
42 tion of the property with respect to which the special additional mort-  
43 gage recording tax imposed pursuant to subdivision one-a of section two  
44 hundred fifty-three of this chapter was paid, the amount of the special  
45 additional mortgage recording tax imposed by subdivision one-a of  
46 section two hundred fifty-three of this chapter which was paid and which  
47 is reflected in the computation of the basis of the property so as to  
48 result in a decrease in such gain or increase in such loss for federal  
49 income tax purposes from the sale or other disposition of the property  
50 with respect to which such tax was paid.

51 (6) [~~in the discretion of the tax commission, any amount of interest~~  
52 ~~directly or indirectly and any other amount directly or indirectly~~  
53 ~~attributable as a carrying charge or otherwise to subsidiary capital or~~  
54 ~~to income, gains or losses from subsidiary capital] any amount allowed  
55 as a deduction for the taxable year under section 172 of the internal~~

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1 revenue code, including carryovers of deductions from prior taxable  
2 years.

3 [~~(7) in the case of a taxpayer who is separately or as a partner of a~~  
4 ~~partnership doing an insurance business as a member of the New York~~  
5 ~~insurance exchange described in section six thousand two hundred one of~~  
6 ~~the insurance law, such taxpayer's distributive or pro rata share of the~~  
7 ~~allocated entire net income of such business as determined under~~  
8 ~~sections fifteen hundred three and fifteen hundred four of this chapter,~~  
9 ~~provided however, in the event such allocated entire net income is a~~  
10 ~~loss, such taxpayer's distributive or pro rata share of such loss shall~~  
11 ~~not be subtracted from federal taxable income in computing entire net~~  
12 ~~income under this subdivision.]~~

13 (8) for taxable years beginning after December thirty-first, nineteen  
14 hundred eighty-one, except with respect to property which is a qualified

15 mass commuting vehicle described in subparagraph (D) of paragraph eight  
16 of subsection (f) of section one hundred sixty-eight of the internal  
17 revenue code (relating to qualified mass commuting vehicles) and proper-  
18 ty of a taxpayer principally engaged in the conduct of aviation (other  
19 than air freight forwarders acting as principal and like indirect air  
20 carriers) which is placed in service before taxable years beginning in  
21 nineteen hundred eighty-nine, any amount which the taxpayer claimed as a  
22 deduction in computing its federal taxable income solely as a result of  
23 an election made pursuant to the provisions of such paragraph eight as  
24 it was in effect for agreements entered into prior to January first,  
25 nineteen hundred eighty-four;

26 (9) for taxable years beginning after December thirty-first, nineteen  
27 hundred eighty-one, except with respect to property which is a qualified  
28 mass commuting vehicle described in subparagraph (D) of paragraph eight  
29 of subsection (f) of section one hundred sixty-eight of the internal  
30 revenue code (relating to qualified mass commuting vehicles) and proper-  
31 ty of a taxpayer principally engaged in the conduct of aviation (other  
32 than air freight forwarders acting as principal and like indirect air  
33 carriers) which is placed in service before taxable years beginning in  
34 nineteen hundred eighty-nine, any amount which the taxpayer would have  
35 been required to include in the computation of its federal taxable  
36 income had it not made the election permitted pursuant to such paragraph  
37 eight as it was in effect for agreements entered into prior to January  
38 first, nineteen hundred eighty-four;

39 (10) in the case of property placed in service in taxable years begin-  
40 ning before nineteen hundred ninety-four, for taxable years beginning  
41 after December thirty-first, nineteen hundred eighty-one, except with  
42 respect to property subject to the provisions of section two hundred  
43 eighty-F of the internal revenue code, property subject to the  
44 provisions of section one hundred sixty-eight of the internal revenue  
45 code which is placed in service in this state in taxable years beginning  
46 after December thirty-first, nineteen hundred eighty-four and property  
47 of a taxpayer principally engaged in the conduct of aviation (other than  
48 air freight forwarders acting as principal and like indirect air carri-  
49 ers) which is placed in service before taxable years beginning in nine-  
50 teen hundred [~~eight-nine~~] eighty-nine, the amount allowable as a  
51 deduction determined under section one hundred sixty-eight of the inter-  
52 nal revenue code;

53 (11) upon the disposition of property to which paragraph (j) of this  
54 subdivision applies, the amount, if any, by which the aggregate of the  
55 amounts described in such paragraph (j) attributable to such property  
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1 exceeds the aggregate of the amounts described in subparagraph ten of  
2 this paragraph attributable to such property.

3 (15) Real property taxes paid on qualified agricultural property and  
4 deducted in determining federal taxable income, to the extent of the  
5 amount of the agricultural property tax credit allowed under subdivision  
6 [~~twenty-two~~] eleven of section two hundred [~~ten~~] ten-B of this article.

7 (16) In the case of a taxpayer which is not an eligible farmer as  
8 defined in paragraph (b) of subdivision [~~twenty-two~~] eleven of section  
9 two hundred [~~ten~~] ten-B of this article, the amount of any deduction  
10 claimed pursuant to section 179 of the internal revenue code with  
11 respect to a sport utility vehicle which is not a passenger automobile  
12 as defined in paragraph 5 of subsection (d) of section 280F of the  
13 internal revenue code.

14 (17) for taxable years beginning after December thirty-first, two  
15 thousand two, in the case of qualified property described in paragraph  
16 two of subsection k of section 168 of the internal revenue code, other  
17 than qualified resurgence zone property described in paragraph (q) of  
18 this subdivision, and other than qualified New York Liberty Zone proper-  
19 ty described in paragraph two of subsection b of section 1400L of the  
20 internal revenue code (without regard to clause (i) of subparagraph (C)

21 of such paragraph), which was placed in service on or after June first,  
22 two thousand three, the amount allowable as a deduction under section  
23 167 of the internal revenue code.

24 (18) Premiums paid for environmental remediation insurance, as defined  
25 in section twenty-three of this chapter, and deducted in determining  
26 federal taxable income, to the extent of the amount of the environmental  
27 remediation insurance credit allowed under such section twenty-three and  
28 subdivision [~~thirty-five~~] nineteen of section two hundred [~~ten~~] ten-B of  
29 this article.

30 (19) The amount of any deduction allowed pursuant to section one  
31 hundred ninety-nine of the internal revenue code.

32 (20) The amount of any federal deduction for taxes imposed under arti-  
33 cle twenty-three of this chapter.

34 (20-a) The amount of any federal deduction for the excise tax on tele-  
35 communication services to the extent such taxes are used as the basis of  
36 the calculation of the tax-free NY area excise tax on telecommunication  
37 services credit allowed under subdivision forty-four of section two  
38 hundred ten-B of this article.

39 (21) The amount of any federal deduction for real property taxes to  
40 the extent such taxes are used as the basis of the calculation of the  
41 real property tax credit for manufacturers allowed under subdivision  
42 forty-three of section two hundred ten-B of this article.

43 [~~(c) Entire net income shall include income within and without the~~  
44 ~~United States;~~]

45 (c-1) (1) Notwithstanding any other provision of this article, in the  
46 case of a taxpayer which is a foreign air carrier holding a foreign air  
47 carrier permit issued by the United States department of transportation  
48 pursuant to section four hundred two of the federal aviation act of  
49 nineteen hundred fifty-eight, as amended, and which is qualified under  
50 subparagraph two of this paragraph, entire net income shall not include,  
51 and shall be computed without the deduction of, amounts directly or  
52 indirectly attributable to, (i) any income derived from the interna-  
53 tional operation of aircraft as described in and subject to the  
54 provisions of section eight hundred eighty-three of the internal revenue  
55 code, (ii) income without the United States which is derived from the  
56 operation of aircraft, and (iii) income without the United States which  
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1 is of a type described in subdivision (a) of section eight hundred  
2 eighty-one of the internal revenue code except that it is derived from  
3 sources without the United States. Entire net income shall include  
4 income described in clauses (i), (ii) and (iii) of this subparagraph in  
5 the case of taxpayers not described in the previous sentence.

6 (2) A taxpayer is qualified under this subparagraph if air carriers  
7 organized in the United States and operating in the foreign country or  
8 countries in which the taxpayer has its major base of operations and in  
9 which it is organized, resident or headquartered (if not in the same  
10 country as its major base of operations) are not subject to any income  
11 tax or other tax based on or measured by income or receipts imposed by  
12 such foreign country or countries or any political subdivision thereof,  
13 or if so subject to such tax, are provided an exemption from such tax  
14 equivalent to that provided for herein.

15 (c-2) Adjustments by qualified public utilities. (1) In the case of a  
16 taxpayer which is a qualified public utility, entire net income shall be  
17 computed with the adjustments set forth in this paragraph.

18 (2) Definitions. (A) Qualified public utility. The term "qualified  
19 public utility" means a taxpayer which: (i) on December thirty-first,  
20 nineteen hundred ninety-nine, was subject to the ratemaking supervision  
21 of the state department of public service, and (ii) for the year ending  
22 on December thirty-first, nineteen hundred ninety-nine, was subject to  
23 tax under former section one hundred eighty-six of this chapter.

24 (B) Transition property. The term "transition property" means property  
25 placed in service by the taxpayer before January first, two thousand,

26 for which a depreciation deduction is allowed under section one hundred  
27 sixty-seven of the internal revenue code.

28 (3) Federal depreciation disallowed. With respect to transition prop-  
29 erty, the deduction for federal income tax purposes for depreciation  
30 shall not be allowed.

31 (4) New York depreciation. With respect to transition property, a  
32 deduction shall be allowed for the depreciation expense shown on the  
33 books and records of the taxpayer for the taxable year and determined in  
34 accordance with generally accepted accounting principles.

35 (5) Regulatory assets. A deduction shall be allowed for amounts recog-  
36 nized as expense on the books and records of the taxpayer for the taxa-  
37 ble year, which amounts were recognized as expense for federal income  
38 tax purposes in a taxable year ending on or before December thirty-  
39 first, nineteen hundred ninety-nine, where: (A) such amounts represent  
40 expenditures which, when made, were charged to a deferred debit account  
41 or similar asset account on the books and records of the taxpayer, and  
42 where (B) the recognition of expense on the books and records of the  
43 taxpayer is matched by revenue stemming from a procedure or adjustment  
44 allowing the recovery of such expenditures, and where (C) such revenue  
45 is recognized for federal income tax purposes in the taxable year.

46 (6) Basis for gain or loss. (A) Recognition transactions. (i) General  
47 rule - book basis. Except as provided in subclause (ii) of this clause,  
48 where transition property is sold or otherwise disposed of in the taxa-  
49 ble year in a transaction of the type requiring recognition of gain or  
50 loss for federal income tax purposes, the basis for determining the  
51 amount of such gain or loss under this article shall be the cost of the  
52 property less the accumulated depreciation on the property determined on  
53 the books and records of the taxpayer in accordance with generally  
54 accepted accounting principles.

55 (ii) Qualified gain - New York basis. Where a sale or disposition  
56 described in subclause (i) of this clause results in recognition of gain  
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1 for federal income tax purposes, and where either (I) such recognition  
2 occurs in a taxable year ending after nineteen hundred ninety-nine and  
3 before two thousand ten, or (II) such recognition is with respect to a  
4 nuclear electric generating facility, the basis for determining the  
5 amount of such gain under this article shall be the cost of the property  
6 less the aggregate of the New York depreciation deductions on the prop-  
7 erty determined under subparagraph four of this paragraph.

8 (iii) No conversion of gain to loss. In the event that the basis  
9 determined under subclause (ii) of this clause results in determination  
10 of a loss on the sale or disposition of the property, no gain or loss  
11 shall be recognized under this article with respect to such sale or  
12 disposition.

13 (B) Nonrecognition transactions. (i) Carryover basis. (I) where tran-  
14 sition property is disposed of ("original disposition") in a transaction  
15 of a type requiring deferral of recognition of gain or loss for federal  
16 income tax purposes, and where (II) there is a subsequent recognition of  
17 gain or loss for federal income tax purposes ("clause B gain or loss"),  
18 the amount of which is determined by reference, in whole or in part, to  
19 the basis of such transition property ("underlying transition proper-  
20 ty"), then (III) the amount of such clause B gain or loss under this  
21 article shall be adjusted as provided in subclause (ii) or (iii) of this  
22 clause.

23 (ii) General rule - book basis adjustment. Except as provided in  
24 subclause (iii) of this clause, the amount of clause B gain shall be  
25 reduced, or the amount of clause B loss increased, by the amount by  
26 which the book basis of the underlying transition property on the date  
27 of original disposition (determined using the provisions of subclause  
28 (i) of clause (A) of this subparagraph) exceeds the federal income tax  
29 basis of such property on such date.

30 (iii) Qualified gain - New York basis adjustment. Where clause B gain

31 either (I) occurs in a taxable year ending after nineteen hundred nine-  
32 ty-nine and before two thousand ten, or (II) is with respect to a nucle-  
33 ar electric generating facility, the amount of such gain under this  
34 article shall be reduced, but not below zero, by the amount by which the  
35 New York basis of the underlying transition property on the date of  
36 original disposition (determined using the provisions of subclause (ii)  
37 of clause (A) of this subparagraph) exceeds the federal income tax basis  
38 of such property on such date.

39 (iv) Application to replacement property and transferee taxpayers.  
40 This clause shall apply whether the clause B gain or loss: (I) is with  
41 respect to either transition property or depreciable property the basis  
42 of which is determined by reference to transition property, or (II) is  
43 recognized by either a qualified public utility or by a taxpayer which  
44 is a transferee of transition property (whether or not such transferee  
45 is a qualified public utility, notwithstanding subparagraph one of this  
46 paragraph).

47 (c-3) Depreciation adjustments by qualified power producers and pipe-  
48 line companies. (1) In the case of a qualified taxpayer, entire net  
49 income shall be computed with the depreciation adjustments set forth in  
50 this paragraph.

51 (2) Definitions. (A) Qualified taxpayer. The term "qualified taxpayer"  
52 means a qualified power producer or a qualified pipeline.

53 (B) Qualified power producer. The term "qualified power producer"  
54 means a taxpayer which: (i) on December thirty-first, nineteen hundred  
55 ninety-nine, was not subject to the ratemaking supervision of the state  
56 department of public service, and (ii) for the year ending on December  
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1 thirty-first, nineteen hundred ninety-nine, was subject to tax under  
2 former section one hundred eighty-six of this chapter on account of its  
3 being principally engaged in the business of supplying electricity.

4 (C) Qualified pipeline. The term "qualified pipeline" means a taxpayer  
5 which: (i) on December thirty-first, nineteen hundred ninety-nine, was  
6 subject to the ratemaking supervision of either the federal energy regu-  
7 latory commission or the state department of public service, and (ii)  
8 for the year ending on December thirty-first, nineteen hundred ninety-  
9 nine, was subject to tax under sections one hundred eighty-three and one  
10 hundred eighty-four of this chapter on account of its being principally  
11 engaged in the business of pipeline transmission.

12 (D) Transition property. The term "transition property" means property  
13 placed in service by a qualified taxpayer before January first, two  
14 thousand, for which a depreciation deduction is allowed under section  
15 one hundred sixty-seven of the internal revenue code.

16 (3) Federal depreciation disallowed. With respect to transition prop-  
17 erty, the deduction for federal income tax purposes for depreciation  
18 shall not be allowed.

19 (4) New York depreciation. With respect to transition property, a  
20 deduction shall be allowed for the depreciation expense computed as  
21 provided in this subparagraph. (A) All transition property shown on the  
22 books and records of the taxpayer on January first, two thousand shall  
23 be treated as a single asset placed in service on such date. The New  
24 York basis for purposes of computing the depreciation deduction on such  
25 single asset shall be the net book value of such transition property  
26 determined on the first day of the federal taxable year ending in two  
27 thousand (or on the date any such property is placed in service, if  
28 later) adjusted as provided in clause (B) of this subparagraph.

29 (B) If transition property is sold or otherwise disposed of, the New  
30 York basis of the single asset shall be reduced on the date of such sale  
31 or disposition by the amount of the adjusted federal tax basis of such  
32 property on such date.

33 (C) The New York depreciation deduction allowed for any taxable year  
34 with respect to such single asset shall be computed using the straight-  
35 line method, a twenty-year life, and a salvage value of zero.

36 (D) For purposes of this subparagraph, the term "net book value" means  
37 cost reduced by accumulated depreciation shown on the books and records  
38 of the taxpayer and determined, in the case of a qualified power produc-  
39 er, in accordance with generally accepted accounting principles; and in  
40 the case of a qualified pipeline, in accordance with the taxpayer's  
41 regulatory reports filed with the federal energy regulatory commission  
42 or state department of public service.

43 (d) The ~~[tax commission]~~ commissioner may, whenever necessary in order  
44 properly to reflect the entire net income of any taxpayer, determine the  
45 year or period in which any item of income or deduction shall be  
46 included, without regard to the method of accounting employed by the  
47 taxpayer[+].

48 (e) The entire net income of any bridge commission created by act of  
49 congress to construct a bridge across an international boundary means  
50 its gross income less the expense of maintaining and operating its prop-  
51 erties, the annual interest upon its bonds and other obligations, and  
52 the annual charge for the retirement of such bonds or obligations at  
53 maturity[+].

54 ~~[(f) A net operating loss deduction shall be allowed which shall be~~  
55 ~~presumably the same as the net operating loss deduction allowed under~~  
56 ~~section one hundred seventy-two of the internal revenue code, or which~~

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1 ~~would have been allowed if the taxpayer had not made an election under~~  
2 ~~subchapter s of chapter one of the internal revenue code, except that in~~  
3 ~~every instance where such deduction is allowed under this article:~~

4 ~~(1) any net operating loss included in determining such deduction~~  
5 ~~shall be adjusted to reflect the inclusions and exclusions from entire~~  
6 ~~net income required by paragraphs (a), (b) and (g) hereof,~~

7 ~~(2) such deduction shall not include any net operating loss sustained~~  
8 ~~during any taxable year beginning prior to January first, nineteen~~  
9 ~~hundred sixty one, or during any taxable year in which the taxpayer was~~  
10 ~~not subject to the tax imposed by this article,~~

11 ~~(3) such deduction shall not exceed the deduction for the taxable year~~  
12 ~~allowed under section one hundred seventy-two of the internal revenue~~  
13 ~~code, or the deduction for the taxable year which would have been~~  
14 ~~allowed if the taxpayer had not made an election under subchapter s of~~  
15 ~~chapter one of the internal revenue code,~~

16 ~~(4) in the case of a New York S corporation, such deduction shall not~~  
17 ~~include any net operating loss sustained during a New York C year or~~  
18 ~~during a New York S year beginning prior to nineteen hundred ninety, and~~  
19 ~~in the case of a New York C corporation, such deduction shall not~~  
20 ~~include any net operating loss sustained during a New York S year,~~  
21 ~~provided, however, a New York S year shall be treated as a taxable year~~  
22 ~~for purposes of determining the number of taxable years to which a net~~  
23 ~~operating loss may be carried back or carried forward, and~~

24 ~~(5) the net operating loss deduction allowed under section one hundred~~  
25 ~~seventy-two of the internal revenue code shall for purposes of this~~  
26 ~~paragraph be determined as if the taxpayer had elected under such~~  
27 ~~section to relinquish the entire carryback period with respect to net~~  
28 ~~operating losses, except with respect to the first ten thousand dollars~~  
29 ~~of each of such losses, sustained during taxable years ending after June~~  
30 ~~thirtieth, nineteen hundred eighty-nine.~~

31 ~~(g) For taxable years commencing prior to January first, nineteen~~  
32 ~~hundred eighty-seven, at the election of the taxpayer, a deduction shall~~  
33 ~~be allowed for expenditures paid or incurred during the taxable year for~~  
34 ~~the construction, reconstruction, erection or improvement of either~~  
35 ~~industrial waste treatment facilities or air pollution control facili-~~  
36 ~~ties, or, with respect to taxable years beginning on or after January~~  
37 ~~first, nineteen hundred seventy-seven and before January first, nineteen~~  
38 ~~hundred eighty-one, industrial waste treatment controlled process facil-~~  
39 ~~ities or air pollution controlled process facilities.~~

40 ~~(1) (A) (1) The term "industrial waste treatment facilities" shall~~



41 ~~mean facilities for the treatment, neutralization or stabilization of~~  
42 ~~industrial waste and other wastes (as the terms "industrial waste" and~~  
43 ~~"other wastes" are defined in section 17-0105 of the environmental~~  
44 ~~conservation law) from a point immediately preceding the point of such~~  
45 ~~treatment, neutralization or stabilization to the point of disposal,~~  
46 ~~including the necessary pumping and transmitting facilities.~~

47 ~~(2) The term "industrial waste treatment controlled process facility"~~  
48 ~~shall mean such portion of the cost of an industrial production facility~~  
49 ~~designed for the purpose of obviating the need for industrial waste~~  
50 ~~treatment facilities as defined in item one of this clause as shall~~  
51 ~~exceed the cost of an industrial production facility of equal production~~  
52 ~~capacity which if constructed would require industrial waste treatment~~  
53 ~~facilities to meet emission standards in compliance with the provisions~~  
54 ~~of the environmental conservation law and the codes, rules, regulations,~~  
55 ~~permits or orders issued pursuant thereto but only to the extent of the~~  
56 ~~cost of such industrial waste treatment facilities.~~

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1 ~~(B) (1) The term "air pollution control facilities" shall mean facili-~~  
2 ~~ties which remove, reduce, or render less noxious air contaminants emit-~~  
3 ~~ted from an air contamination source (as the terms "air contaminant" and~~  
4 ~~"air contamination source" are defined in section 19-0107 of the envi-~~  
5 ~~ronmental conservation law) from a point immediately preceding the point~~  
6 ~~of such removal, reduction or rendering to the point of discharge of~~  
7 ~~air, meeting emission standards as established by the department of~~  
8 ~~environmental conservation, but excluding such facilities installed for~~  
9 ~~the primary purpose of salvaging materials which are usable in the manu-~~  
10 ~~facturing process or are marketable and excluding those facilities which~~  
11 ~~rely for their efficacy on dilution, dispersion or assimilation of air~~  
12 ~~contaminants in the ambient air after emission. Such term shall further~~  
13 ~~include flue gas desulfurization equipment and attendant sludge disposal~~  
14 ~~facilities, fluidized bed boilers, precombustion coal cleaning facili-~~  
15 ~~ties or other facilities that conform with this subdivision and which~~  
16 ~~comply with the provisions of the state acid deposition control act set~~  
17 ~~forth in title nine of article nineteen of the environmental conserva-~~  
18 ~~tion law.~~

19 ~~(2) The term "air pollution controlled process facility" shall mean~~  
20 ~~such portion of the cost of an industrial production facility designed~~  
21 ~~for the purpose of obviating the need for air pollution control facili-~~  
22 ~~ties as defined in item one of this clause as shall exceed the cost of~~  
23 ~~an industrial production facility of equal productive capacity which if~~  
24 ~~constructed would require air pollution control facilities to inert~~  
25 ~~emission standards as established pursuant to title three of article~~  
26 ~~nineteen of the environmental conservation law but only to the extent of~~  
27 ~~the cost of such air pollution control facilities.~~

28 ~~(2) However, such deduction shall be allowed only~~

29 ~~(A) with respect to tangible property which is depreciable, pursuant~~  
30 ~~to section one hundred sixty-seven of the internal revenue code, having~~  
31 ~~a situs in this state and used in the taxpayer's trade or business, the~~  
32 ~~construction, reconstruction, erection or improvement of which, in the~~  
33 ~~case of industrial waste treatment facilities, is initiated on or after~~  
34 ~~January first, nineteen hundred sixty-five or which, in the case of air~~  
35 ~~pollution control facilities, is initiated on or after January first,~~  
36 ~~nineteen hundred sixty-six, or which in the case of industrial waste~~  
37 ~~treatment controlled process facilities or air pollution controlled~~  
38 ~~process facilities is initiated on and after January first, nineteen~~  
39 ~~hundred seventy-seven, and~~

40 ~~(B) on condition that such facilities have been certified by the state~~  
41 ~~commissioner of environmental conservation or his designated represen-~~  
42 ~~tative, pursuant to section 19-0309 of the environmental conservation~~  
43 ~~law, as complying with applicable provisions of the environmental~~  
44 ~~conservation law, the public health law, the state sanitary code and~~  
45 ~~codes, rules, regulations, permits or orders issued pursuant thereto,~~

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and

~~(C) on condition that entire net income for the taxable year and all succeeding taxable years be computed without any deductions for such expenditures or for depreciation or amortization of the same property other than the deductions allowed by this paragraph (g), except to the extent that the basis of the property may be attributable to factors other than such expenditures, or in case a deduction is allowable pursuant to this paragraph for only a part of such expenditures, on condition that any deduction allowed for federal income tax purposes for such expenditures or for depreciation or amortization of the same property be~~

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~~proportionately reduced in computing entire net income for the taxable year and all succeeding taxable years, and~~

~~(D) where the election provided for in paragraph (d) of subdivision three of section two hundred ten of this chapter has not been exercised in respect to the same property.~~

~~(3) (A) If expenditures in respect to an industrial waste treatment facility, an air pollution control facility, an industrial waste treatment controlled process facility or an air pollution controlled process facility have been deducted as provided herein and if within ten years from the end of the taxable year in which such deduction was allowed such property or any part thereof is used for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable, the taxpayer shall report such change of use in its report for the first taxable year during which it occurs, and the tax commission may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph nine of subsection (c) of section ten hundred eighty-three of this chapter.~~

~~(B) If a deduction is allowed as herein provided for expenditures paid or incurred during any taxable year on the basis of a temporary certificate of compliance issued pursuant to the environmental conservation law and if the taxpayer fails to obtain a permanent certificate of compliance upon completion of the facilities with respect to which such temporary certificate was issued, the taxpayer shall report such failure in its report for the taxable year during which such facilities are completed, and the tax commission may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from in such recomputation within the time fixed by paragraph nine of subsection (c) of section ten hundred eighty-three.~~

~~(C) If a deduction is allowed as herein provided for expenditures paid or incurred during any taxable year in respect to an air pollution control facility on the basis of a certificate of compliance issued pursuant to the environmental conservation law and the certificate is revoked pursuant to subdivision three of section 19-0309 of the environmental conservation law, the tax commission may recompute the tax for the year or years for which the facility is not or was not in compliance with the applicable provisions of the environmental conservation law, the state sanitary code or codes, rules, regulations, permits or orders promulgated pursuant thereto, and for which a deduction was allowed, as well as for any carryback or carryover year to which such deduction was carried, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph nine of subsection (c) of section ten hundred eighty-three.~~

~~(4) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this paragraph, such deduction shall be disregarded in computing gain or loss, and the gain or loss on the sale or other disposition of such property shall be the gain or loss entering into the computation of entire taxable income which the taxpayer is required to report to the~~

52 ~~United States treasury department for such taxable year.]~~

53 (h) If the period covered by a report under this article is other than  
54 the period covered by the report to the United States treasury depart-  
55 ment,  
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1 (1) except as provided in subparagraph two hereof, entire net income  
2 shall be determined by multiplying the taxable income reported to such  
3 department (as adjusted pursuant to the provisions of this article) by  
4 the number of calendar months or major parts thereof covered by the  
5 report under this article and dividing by the number of calendar months  
6 or major parts thereof covered by the report to such department. If it  
7 shall appear that such method of determining entire net income does not  
8 properly reflect the taxpayer's income during the period covered by the  
9 report under this article, the ~~[tax commission]~~ commissioner shall be  
10 authorized in its discretion to determine such entire net income solely  
11 on the basis of the taxpayer's income during the period covered by its  
12 report under this article[+].

13 (2) ~~[in]~~ In the case of a New York S termination year, an equal  
14 portion of entire net income shall be assigned to each day of such year.  
15 The portion of such entire net income thereby assigned to the S short  
16 year and the C short year shall be included in the respective reports  
17 for the S short year and the C short year under this article. However,  
18 where paragraph three of subsection (s) of section six hundred twelve of  
19 this chapter applies, the portion of such entire net income assigned to  
20 the S short year and the C short year shall be determined under normal  
21 tax accounting rules.

22 (i) With respect to a DISC which during any taxable year or reporting  
23 year (1) received more than five percent of its gross sales from the  
24 sale of inventory or other property which it purchased from its stock-  
25 holders, (2) received more than five percent of its gross rentals from  
26 the rental of property which it purchased or rented from its stockhold-  
27 ers or (3) received more than five percent of its total receipts other  
28 than sales and rentals from its stockholders, the following provisions  
29 shall apply.

30 (A) For any taxable year in which sub-paragraph (B) of this paragraph  
31 is in effect and not rendered invalid, a DISC meeting the above test  
32 shall be exempt from all taxes imposed by this article.

33 (B) Supplemental to the provisions of subdivision five of section two  
34 hundred eleven of this article, any taxpayer required to compute a tax  
35 under this article, which during the taxable year being reported was a  
36 stockholder in any DISC meeting the test prescribed in this paragraph,  
37 shall for any taxable year ending after December thirty-first, nineteen  
38 hundred seventy-one adjust each item of its receipts, expenses, assets  
39 and liabilities, as otherwise computed under this article, by adding  
40 thereto its attributable share of each such DISC's receipts, expenses,  
41 assets and liabilities as reportable by each such DISC to the United  
42 States Treasury Department for its annual reporting period ending during  
43 the current taxable year of such taxpayer; provided, however, (1) that  
44 all transactions between the taxpayer and each such DISC shall be elimi-  
45 nated from the taxpayer's adjusted receipts, expenses, assets and  
46 liabilities; (2) that the taxpayer's entire net income as otherwise  
47 computed under this section, shall be reduced by subtracting the amount  
48 of the deemed distribution of current income, if any, from each such  
49 DISC already included in the entire net income of such taxpayer by  
50 virtue of having been included in its entire taxable income for that  
51 taxable year as reported to the United States Treasury Department; and  
52 (3) that in the event this paragraph should be rendered invalid, all  
53 DISC's and their stockholders taxable hereunder shall be taxed instead  
54 under the remaining portions of this article.

55 (j) in the case of property placed in service in taxable years begin-  
56 ning before nineteen hundred ninety-four, for taxable years beginning  
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1 after December thirty-first, nineteen hundred eighty-one, except with  
2 respect to property subject to the provisions of section two hundred  
3 eighty-F of the internal revenue code and property subject to the  
4 provisions of section one hundred sixty-eight of the internal revenue  
5 code which is placed in service in this state in taxable years beginning  
6 after December thirty-first, nineteen hundred eighty-four, and provided  
7 a deduction has not been excluded from entire net income pursuant to  
8 subparagraph eight of paragraph (b) of this subdivision, a taxpayer  
9 shall be allowed with respect to property which is subject to the  
10 provisions of section one hundred sixty-eight of the internal revenue  
11 code the depreciation deduction allowable under section one hundred  
12 sixty-seven of the internal revenue code as such section would have  
13 applied to property placed in service on December thirty-first, nineteen  
14 hundred eighty. This paragraph shall not apply to property of a taxpayer  
15 principally engaged in the conduct of aviation (other than air freight  
16 forwarders acting as principal and like indirect air carriers) which is  
17 placed in service before taxable years beginning in nineteen hundred  
18 eighty-nine.

19 (k) QSSS. (1) New York S corporation. In the case of a New York S  
20 corporation which is the parent of a qualified subchapter S subsidiary  
21 (QSSS) with respect to a taxable year:

22 (A) where the QSSS is not an excluded corporation,

23 (i) in determining the entire net income of such parent corporation,  
24 all assets, liabilities, income and deductions of the QSSS shall be  
25 treated as assets, liabilities, income and deductions of the parent  
26 corporation, and

27 (ii) the QSSS shall be exempt from all taxes imposed by this article,  
28 and

29 (B) where the QSSS is an excluded corporation, the entire net income  
30 of the parent corporation shall be determined as if the federal QSSS  
31 election had not been made.

32 (2) New York C corporation. In the case of a New York C corporation  
33 which is the parent of a QSSS with respect to a taxable year:

34 (A) where the QSSS is a taxpayer,

35 (i) in determining the entire net income of such parent corporation,  
36 all assets, liabilities, income and deductions of the QSSS shall be  
37 treated as assets, liabilities, income and deductions of the parent  
38 corporation, and

39 (ii) the QSSS shall be exempt from all taxes imposed by this article,  
40 and

41 (B) where the QSSS is not a taxpayer,

42 (i) if the QSSS is not an excluded corporation, the parent corporation  
43 may make a QSSS inclusion election to include all assets, liabilities,  
44 income and deductions of the QSSS as assets, liabilities, income and  
45 deductions of the parent corporation, and

46 (ii) in the absence of such election, or where the QSSS is an excluded  
47 corporation, the entire net income of the parent corporation shall be  
48 determined as if the federal QSSS election had not been made.

49 (3) Non-New York S corporation not excluded. In the case of an S  
50 corporation which is not a taxpayer and not an excluded corporation, and  
51 which is the parent of a QSSS which is a taxpayer, the shareholders of  
52 the parent corporation shall be entitled to make the New York S election  
53 under subsection (a) of section six hundred sixty of this chapter.

54 (A) For any taxable year for which such election is in effect, the  
55 parent corporation shall be subject to tax under this article as a New  
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1 York S corporation, and the provisions of clause (A) of subparagraph one  
2 of this paragraph shall apply.

3 (B) For any taxable year for which such election is not in effect, the  
4 QSSS shall be a New York C corporation, and the entire net income of the  
5 QSSS shall be determined as if the federal QSSS election had not been

6 made. For purposes of such determination, the taxable year of the parent  
7 corporation shall constitute the taxable year of the QSSS, excluding,  
8 however, any portion of such year during which the QSSS is not a taxpay-  
9 er.

10 (4) S corporation excluded. In the case of an S corporation which is  
11 an excluded corporation and which is the parent of a QSSS which is a  
12 taxpayer, the QSSS shall be a New York C corporation and the provisions  
13 of clause (B) of subparagraph three of this paragraph shall apply.

14 (5) Excluded corporation. The term "excluded corporation" means a  
15 corporation subject to tax under sections one hundred eighty-three  
16 through one hundred eighty-six, inclusive, or article ~~[thirty-two or]~~  
17 thirty-three of this chapter, or a foreign corporation not taxable by  
18 this state which, if it were taxable, would be subject to tax under any  
19 of such sections or ~~[articles]~~ article.

20 (6) Taxpayer. For purposes of this paragraph, the term "taxpayer"  
21 means a parent corporation or QSSS subject to tax under this article,  
22 determined without regard to the provisions of this paragraph.

23 (7) QSSS inclusion election. The election under subclause (i) of  
24 clause (B) of subparagraph two of this paragraph shall be effective for  
25 the taxable year for which made and for all succeeding taxable years of  
26 the corporation until such election is terminated. An election or termi-  
27 nation shall be made on such form and in such manner as the commissioner  
28 may prescribe by regulation or instruction.

29 (1) Emerging technology investment deferral. In the case of any sale  
30 of a qualified emerging technologies investment held for more than thir-  
31 ty-six months and with respect to which the taxpayer elects the applica-  
32 tion of this paragraph, gain from such sale shall be recognized only to  
33 the extent that the amount realized on such sale exceeds the cost of any  
34 qualified emerging technologies investment purchased by the taxpayer  
35 during the three hundred sixty-five-day period beginning on the date of  
36 such sale, reduced by any portion of such cost previously taken into  
37 account under this paragraph. For purposes of this paragraph the follow-  
38 ing shall apply:

39 (1) A qualified investment is stock of a corporation or an interest,  
40 other than as a creditor, in a partnership or limited liability company  
41 that was acquired by the taxpayer as provided in Internal Revenue Code §  
42 1202(c)(1)(B), except that the reference to the term "stock" in such  
43 section shall be read as "investment," or by the taxpayer from a person  
44 who had acquired such stock or interest in such a manner.

45 (2) A qualified emerging technology investment is a qualified invest-  
46 ment, that was held by the taxpayer for at least thirty-six months, in a  
47 company defined in paragraph (c) of subdivision one of section thirty-  
48 one hundred two-e of the public authorities law or an investment in a  
49 partnership or limited liability company that is taxed as a partnership  
50 to the extent that such partnership or limited liability company invests  
51 in qualified emerging technology companies.

52 (3) For purposes of determining whether the nonrecognition of gain  
53 under this subsection applies to a qualified emerging technologies  
54 investment that is sold, the taxpayer's holding period for such invest-  
55 ment and the qualified emerging technologies investment that is  
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1 purchased shall be determined without regard to Internal Revenue Code §  
2 1223.

3 (m) Amounts deferred. The amount deferred under paragraph (l) of this  
4 subdivision shall be added to entire net income when the reinvestment in  
5 the New York qualified emerging technology company which qualified a  
6 taxpayer for such deferral is sold.

7 ~~[(n) Qualified gas transportation contracts.~~  
8 ~~(1) Any tax paid under this article allocable to receipts attributable~~  
9 ~~to a "qualified gas transportation contract" shall be deemed to have~~  
10 ~~been paid under article nine of this chapter for all purposes of law for~~  
11 ~~taxable years commencing on or after January first, two thousand,~~

12 ~~computed as hereinafter provided, if all of the following conditions are~~  
13 ~~met:~~

14 ~~(i) For periods ending prior to January first, two thousand, the~~  
15 ~~taxpayer paid the franchise tax due under section one hundred eighty-~~  
16 ~~four of this chapter.~~

17 ~~(ii) For the taxable year, all of the receipts from the pipeline~~  
18 ~~transportation of natural gas attributable to the taxpayer and included~~  
19 ~~in the taxpayer's entire net income (without regard to this paragraph)~~  
20 ~~are solely from the transportation of natural gas for wholesale custom-~~  
21 ~~ers and commercial retail customers.~~

22 ~~(iii) The taxpayer's franchise tax liability under this article for~~  
23 ~~the taxable year (computed without regard to this paragraph) is deter-~~  
24 ~~mined under paragraph (a) of subdivision one of section two hundred ten~~  
25 ~~of this article, and such tax liability (without regard to this para-~~  
26 ~~graph) is greater than the liability the taxpayer would have incurred~~  
27 ~~under sections one hundred eighty-three and one hundred eighty-four of~~  
28 ~~this chapter (as such sections existed on December thirty-first, nine-~~  
29 ~~teen hundred ninety-nine) based on the same taxable period.~~

30 ~~(iv) The taxpayer is a party to a "qualified gas transportation~~  
31 ~~contract," as defined herein.~~

32 ~~(2) The provisions of this paragraph shall apply only for the taxable~~  
33 ~~years during which such qualified gas transportation contract is in full~~  
34 ~~force and effect, and shall apply only to the receipts of the taxpayer~~  
35 ~~less any expenses of the taxpayer (but not less than zero), during the~~  
36 ~~taxable year, to the extent included in entire net income, which are~~  
37 ~~attributable to any such qualified gas transportation contracts.~~  
38 ~~Provided, further, in any event, the characterization hereunder shall~~  
39 ~~expire and be of no further force and effect for taxable years commenc-~~  
40 ~~ing on or after January first, two thousand fifteen.~~

41 ~~(3) The term "qualified gas transportation contract" shall mean a~~  
42 ~~service agreement for the transportation of natural gas for an end-user~~  
43 ~~which is a qualified cogeneration facility with a rated capacity of one~~  
44 ~~thousand megawatts or more, which (i) was entered into before January~~  
45 ~~first, two thousand, and was in full force and effect and binding on the~~  
46 ~~parties thereto as of such date, (ii) as originally executed, was for a~~  
47 ~~term of at least twenty years, and (iii) the terms of which prohibit the~~  
48 ~~pass-through to such customer of the franchise tax imposed under this~~  
49 ~~article, while allowing the recovery of the gross earnings tax imposed~~  
50 ~~under section one hundred eighty-four of this chapter. A contract shall~~  
51 ~~not qualify as a qualified gas transportation contract if there is: (i)~~  
52 ~~any renewal or extension of an otherwise qualified gas transportation~~  
53 ~~contract occurring on or after January first, two thousand, or (ii) any~~  
54 ~~material amendment to, or supplementation of, an otherwise qualified gas~~  
55 ~~transportation contract on or after such date. Such renewal, extension,~~  
56 ~~or material amendment or supplementation shall have the same force and~~

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1 ~~effect of terminating the characterization hereunder as if the qualify-~~  
2 ~~ing contract had expired by its own terms.~~

3 ~~(e)]~~ (n-1) For taxable years beginning after December thirty-first,  
4 two thousand two, in the case of qualified property described in para-  
5 graph two of subsection k of section 168 of the internal revenue code,  
6 other than qualified resurgence zone property described in paragraph (q)  
7 of this subdivision, and other than qualified New York Liberty Zone  
8 property described in paragraph two of subsection b of section 1400L of  
9 the internal revenue code (without regard to clause (i) of subparagraph  
10 (C) of such paragraph), which was placed in service on or after June  
11 first, two thousand three, a taxpayer shall be allowed with respect to  
12 such property the depreciation deduction allowable under section 167 of  
13 the internal revenue code as such section would have applied to such  
14 property had it been acquired by the taxpayer on September tenth, two  
15 thousand one.

16 (o) Related members expense add back. (1) Definitions. (A) Related

17 member. "Related member" means a related person as defined in subpara-  
18 graph (c) of paragraph three of subsection (b) of section four hundred  
19 sixty-five of the internal revenue code, except that "fifty percent"  
20 shall be substituted for "ten percent".

21 (B) Effective rate of tax. "Effective rate of tax" means, as to any  
22 state or U.S. possession, the maximum statutory rate of tax imposed by  
23 the state or possession on or measured by a related member's net income  
24 multiplied by the apportionment percentage, if any, applicable to the  
25 related member under the laws of said jurisdiction. For purposes of this  
26 definition, the effective rate of tax as to any state or U.S. possession  
27 is zero where the related member's net income tax liability in said  
28 jurisdiction is reported on a combined or consolidated return including  
29 both the taxpayer and the related member where the reported transactions  
30 between the taxpayer and the related member are eliminated or offset.  
31 Also, for purposes of this definition, when computing the effective rate  
32 of tax for a jurisdiction in which a related member's net income is  
33 eliminated or offset by a credit or similar adjustment that is dependent  
34 upon the related member either maintaining or managing intangible prop-  
35 erty or collecting interest income in that jurisdiction, the maximum  
36 statutory rate of tax imposed by said jurisdiction shall be decreased to  
37 reflect the statutory rate of tax that applies to the related member as  
38 effectively reduced by such credit or similar adjustment.

39 (C) Royalty payments. Royalty payments are payments directly connected  
40 to the acquisition, use, maintenance or management, ownership, sale,  
41 exchange, or any other disposition of licenses, trademarks, copyrights,  
42 trade names, trade dress, service marks, mask works, trade secrets,  
43 patents and any other similar types of intangible assets as determined  
44 by the commissioner, and include amounts allowable as interest  
45 deductions under section one hundred sixty-three of the internal revenue  
46 code to the extent such amounts are directly or indirectly for, related  
47 to or in connection with the acquisition, use, maintenance or manage-  
48 ment, ownership, sale, exchange or disposition of such intangible  
49 assets.

50 (D) Valid Business Purpose. A valid business purpose is one or more  
51 business purposes, other than the avoidance or reduction of taxation,  
52 which alone or in combination constitute the primary motivation for some  
53 business activity or transaction, which activity or transaction changes  
54 in a meaningful way, apart from tax effects, the economic position of  
55 the taxpayer. The economic position of the taxpayer includes an increase  
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1 in the market share of the taxpayer, or the entry by the taxpayer into  
2 new business markets.

3 (2) Royalty expense add backs. (A) Except where a taxpayer is included  
4 in a combined report with a related member pursuant to [~~subdivision four~~  
5 ~~of~~] section two hundred [~~eleven~~] ten-C of this article, for the purpose  
6 of computing entire net income or other applicable taxable basis, a  
7 taxpayer must add back royalty payments directly or indirectly paid,  
8 accrued, or incurred in connection with one or more direct or indirect  
9 transactions with one or more related members during the taxable year to  
10 the extent deductible in calculating federal taxable income.

11 (B) Exceptions. (i) The adjustment required in this paragraph shall  
12 not apply to the portion of the royalty payment that the taxpayer estab-  
13 lishes, by clear and convincing evidence of the type and in the form  
14 specified by the commissioner, meets all of the following requirements:  
15 (I) the related member was subject to tax in this state or another state  
16 or possession of the United States or a foreign nation or some combina-  
17 tion thereof on a tax base that included the royalty payment paid,  
18 accrued or incurred by the taxpayer; (II) the related member during the  
19 same taxable year directly or indirectly paid, accrued or incurred such  
20 portion to a person that is not a related member; and (III) the trans-  
21 action giving rise to the royalty payment between the taxpayer and the  
22 related member was undertaken for a valid business purpose.

23 (ii) The adjustment required in this paragraph shall not apply if the  
24 taxpayer establishes, by clear and convincing evidence of the type and  
25 in the form specified by the commissioner, that: (I) the related member  
26 was subject to tax on or measured by its net income in this state or  
27 another state or possession of the United States or some combination  
28 thereof; (II) the tax base for said tax included the royalty payment  
29 paid, accrued or incurred by the taxpayer; and (III) the aggregate  
30 effective rate of tax applied to the related member in those jurisdic-  
31 tions is no less than eighty percent of the statutory rate of tax that  
32 applied to the taxpayer under section two hundred ten of this article  
33 for the taxable year.

34 (iii) The adjustment required in this paragraph shall not apply if the  
35 taxpayer establishes, by clear and convincing evidence of the type and  
36 in the form specified by the commissioner, that: (I) the royalty payment  
37 was paid, accrued or incurred to a related member organized under the  
38 laws of a country other than the United States; (II) the related  
39 member's income from the transaction was subject to a comprehensive  
40 income tax treaty between such country and the United States; (III) the  
41 related member was subject to tax in a foreign nation on a tax base that  
42 included the royalty payment paid, accrued or incurred by the taxpayer;  
43 (IV) the related member's income from the transaction was taxed in such  
44 country at an effective rate of tax at least equal to that imposed by  
45 this state; and (V) the royalty payment was paid, accrued or incurred  
46 pursuant to a transaction that was undertaken for a valid business  
47 purpose and using terms that reflect an arm's length relationship.

48 (iv) The adjustment required in this paragraph shall not apply if the  
49 taxpayer and the commissioner agree in writing to the application or use  
50 of alternative adjustments or computations. The commissioner may, in his  
51 or her discretion, agree to the application or use of alternative  
52 adjustments or computations when he or she concludes that in the absence  
53 of such agreement the income of the taxpayer would not be properly  
54 reflected.

55 (p) For taxable years beginning after December thirty-first, two thou-  
56 sand two, upon the disposition of property to which paragraph [~~(e)~~]  
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1 (n-1) of this subdivision applies, the amount of any gain or loss inclu-  
2 dible in entire net income shall be adjusted to reflect the inclusions  
3 and exclusions from entire net income pursuant to subparagraph seventeen  
4 of paragraph (a) and subparagraph seventeen of paragraph (b) of this  
5 subdivision attributable to such property.

6 (q) For purposes of paragraphs [~~(e)~~] (n-1) and (p) of this subdivi-  
7 sion, qualified resurgence zone property shall mean qualified property  
8 described in paragraph two of subsection k of section 168 of the inter-  
9 nal revenue code substantially all of the use of which is in the resur-  
10 gence zone, as defined below, and is in the active conduct of a trade or  
11 business by the taxpayer in such zone, and the original use of which in  
12 the resurgence zone commences with the taxpayer after December thirty-  
13 first, two thousand two. The resurgence zone shall mean the area of New  
14 York county bounded on the south by a line running from the intersection  
15 of the Hudson River with the Holland Tunnel, and running thence east to  
16 Canal Street, then running along the centerline of Canal Street to the  
17 intersection of the Bowery and Canal Street, running thence in a south-  
18 easterly direction diagonally across Manhattan Bridge Plaza, to the  
19 Manhattan Bridge and thence along the centerline of the Manhattan Bridge  
20 to the point where the centerline of the Manhattan Bridge would inter-  
21 sect with the easterly bank of the East River, and bounded on the north  
22 by a line running from the intersection of the Hudson River with the  
23 Holland Tunnel and running thence north along West Avenue to the inter-  
24 section of Clarkson Street then running east along the centerline of  
25 Clarkson Street to the intersection of Washington Avenue, then running  
26 south along the centerline of Washington Avenue to the intersection of  
27 West Houston Street, then east along the centerline of West Houston



28 Street, then at the intersection of the Avenue of the Americas continu-  
29 ing east along the centerline of East Houston Street to the easterly  
30 bank of the East River.

31 (r) Subtraction modification for qualified residential loan portfo-  
32 lios. (1) (A) A taxpayer that is either a thrift institution as defined  
33 in subparagraph three of this paragraph or a qualified community bank as  
34 defined in subparagraph two of paragraph (s) of this subdivision and  
35 maintains a qualified residential loan portfolio as defined in subpara-  
36 graph two of this paragraph shall be allowed as a deduction in computing  
37 entire net income the amount, if any, by which (i) thirty-two percent of  
38 its entire net income determined without regard to this paragraph  
39 exceeds (ii) the amounts deducted by the taxpayer pursuant to sections  
40 166 and 585 of the Internal Revenue Code less any amounts included in  
41 federal taxable income as a result of a recovery of a loan.

42 (B) (i) If the taxpayer is in a combined report under section two  
43 hundred ten-C of this article, this deduction will be computed on a  
44 combined basis. In that instance, the entire net income of the combined  
45 reporting group for purposes of this paragraph shall be multiplied by a  
46 fraction, the numerator of which is the average total assets of all the  
47 thrift institutions and qualified community banks included in the  
48 combined report and the denominator of which is the average total assets  
49 of all the corporations included in the combined report.

50 (ii) Measurement of assets. (I) Total assets are those assets that are  
51 properly reflected on a balance sheet, computed in the same manner as is  
52 required by the banking regulator of the taxpayers included in the  
53 combined return.

54 (II) Assets will only be included if the income or expenses of which  
55 are properly reflected (or would have been properly reflected if not  
56 fully depreciated or expensed, or depreciated or expensed to a nominal

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1 amount) in the computation of the combined group's entire net income for  
2 the taxable year. Assets will not include deferred tax assets and intan-  
3 gible assets identified as "goodwill".

4 (III) Tangible real and personal property, such as buildings, land,  
5 machinery, and equipment shall be valued at cost. Leased assets will be  
6 valued at the annual lease payment multiplied by eight. Intangible prop-  
7 erty, such as loans and investments, shall be valued at book value  
8 exclusive of reserves.

9 (IV) Intercorporate stockholdings and bills, notes and accounts  
10 receivable, and other intercorporate indebtedness between the corpo-  
11 rations included in the combined report shall be eliminated.

12 (V) Average assets are computed using the assets measured on the first  
13 day of the taxable year, and on the last day of each subsequent quarter  
14 of the taxable year or month or day during the taxable year.

15 (2) Qualified residential loan portfolio. (A) A taxpayer maintains a  
16 qualified residential loan portfolio if at least sixty percent of the  
17 amount of the total assets at the close of the taxable year of the  
18 thrift institution or qualified community bank consists of the assets  
19 described in items (i) through (xii) of this clause, with the applica-  
20 tion of the rule in item (xiii). If the taxpayer is a member of a  
21 combined group, the determination of whether there is a qualified resi-  
22 dential loan portfolio will be made by aggregating the assets of the  
23 thrift institutions and qualified community banks that are members of  
24 the combined group.

25 Assets:

26 (i) cash, which includes cash and cash equivalents including cash  
27 items in the process of collection, deposit with other financial insti-  
28 tutions, including corporate credit unions, balances with federal  
29 reserve banks and federal home loan banks, federal funds sold, and cash  
30 and cash equivalents on hand. Cash shall not include any balances serv-  
31 ing as collateral for securities lending transactions;

32 (ii) obligations of the United States or of a state or political

33 subdivision thereof, and stock or obligations of a corporation which is  
34 an instrumentality or a government sponsored enterprise of the United  
35 States or of a state or political subdivision thereof;

36 (iii) loans secured by a deposit or share of a member;

37 (iv) loans secured by an interest in real property which is (or from  
38 the proceeds of the loan, will become) residential real property or real  
39 property used primarily for church purposes, loans made for the improve-  
40 ment of residential real property or real property used primarily for  
41 church purposes, provided that for purposes of this item, residential  
42 real property shall include single or multi-family dwellings, facilities  
43 in residential developments dedicated to public use or property used on  
44 a nonprofit basis for residents, and mobile homes not used on a tran-  
45 sient basis;

46 (v) property acquired through the liquidation of defaulted loans  
47 described in item (iv) of this clause;

48 (vi) any regular or residual interest in a REMIC, as such term is  
49 defined in section 860D of the internal revenue code, but only in the  
50 proportion which the assets of such REMIC consist of property described  
51 in any of the preceding items of this clause, except that if ninety-five  
52 percent or more of the assets of such REMIC are assets described in  
53 items (i) through (v) of this clause, the entire interest in the REMIC  
54 shall qualify;

55 (vii) any mortgage-backed security which represents ownership of a  
56 fractional undivided interest in a trust, the assets of which consist

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1 primarily of mortgage loans, provided that the real property which  
2 serves as security for the loans is (or from the proceeds of the loan,  
3 will become) the type of property described in item (iv) of this clause  
4 and any collateralized mortgage obligation, the security for which  
5 consists primarily of mortgage loans that maintain as security the type  
6 of property described in item (iv) of this clause;

7 (viii) certificates of deposit in, or obligations of, a corporation  
8 organized under a state law which specifically authorizes such corpo-  
9 ration to insure the deposits or share accounts of member associations;

10 (ix) loans secured by an interest in educational, health, or welfare  
11 institutions or facilities, including structures designed or used prima-  
12 riarily for residential purposes for students, residents, and persons under  
13 care, employees, or members of the staff of such institutions or facili-  
14 ties;

15 (x) loans made for the payment of expenses of college or university  
16 education or vocational training;

17 (xi) property used by the taxpayer in support of business which  
18 consists principally of acquiring the savings of the public and invest-  
19 ing in loans; and

20 (xii) loans for which the taxpayer is the creditor and which are whol-  
21 ly secured by loans described in item (iv) of this clause.

22 (xiii) The value of accrued interest receivable and any loss-sharing  
23 commitment or other loan guaranty by a governmental agency will be  
24 considered part of the basis in the loans to which the accrued interest  
25 or loss protection applies.

26 (B) At the election of the taxpayer, the percentage specified in  
27 clause (A) of this subparagraph shall be applied on the basis of the  
28 average assets outstanding during the taxable year, in lieu of the close  
29 of the taxable year. The taxpayer can elect to compute an average using  
30 the assets measured on the first day of the taxable year and on the last  
31 day of each subsequent quarter, or month or day during the taxable year.  
32 This election may be made annually.

33 (C) For purposes of item (iv) of clause (A) of this subparagraph, if a  
34 multifamily structure securing a loan is used in part for nonresidential  
35 use purposes, the entire loan is deemed a residential real property loan  
36 if the planned residential use exceeds eighty percent of the property's  
37 planned use (measured, at the taxpayer's election, by using square

38 footage or gross rental revenue, and determined as of the time the loan  
39 is made).

40 (D) For purposes of item (iv) of clause (A) of this subparagraph,  
41 loans made to finance the acquisition or development of land shall be  
42 deemed to be loans secured by an interest in residential real property  
43 if there is a reasonable assurance that the property will become resi-  
44 dential real property within a period of three years from the date of  
45 acquisition of such land; but this sentence shall not apply for any  
46 taxable year unless, within such three year period, such land becomes  
47 residential real property. For purposes of determining whether any  
48 interest in a REMIC qualifies under item (vi) of clause (A) of this  
49 subparagraph, any regular interest in another REMIC held by such REMIC  
50 shall be treated as a loan described in a preceding item under princi-  
51 ples similar to the principle of such item (vi), except that if such  
52 REMICs are part of a tiered structure, they shall be treated as one  
53 REMIC for purposes of such item (vi).

54 (3) For purposes of this paragraph, a "thrift institution" is a  
55 savings bank, a savings and loan association, or other savings institu-  
56 tion chartered and supervised as such under federal or state law.

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1 (s) Subtraction modification for community banks and small thrifts.  
2 (1) A taxpayer that is a qualified community bank as defined in subpara-  
3 graph two of this paragraph or a small thrift institution as defined in  
4 subparagraph two-a of this paragraph shall be allowed a deduction in  
5 computing entire net income equal to the amount computed under subpara-  
6 graph three of this paragraph.

7 (2) To be a qualified community bank, a taxpayer must satisfy the  
8 following conditions.

9 (A) It is a bank or trust company organized under or subject to the  
10 provisions of article three of the banking law or a comparable provision  
11 of the laws of another state, or a national banking association.

12 (B) The average value during the taxable year of the assets of the  
13 taxpayer, or the assets of the combined reporting group of the taxpayer  
14 under section two hundred ten-C of this article, must not exceed eight  
15 billion dollars.

16 (2-a) To be a small thrift institution, a taxpayer must satisfy the  
17 following conditions.

18 (A) It is a savings bank, a savings and loan association, or other  
19 savings institution chartered and supervised as such under federal or  
20 state law.

21 (B) The average value during the taxable year of the assets of the  
22 taxpayer, or the assets of the combined reporting group of the taxpayer  
23 under section two hundred ten-C of this article, must not exceed eight  
24 billion dollars.

25 (3) (A) The subtraction modification shall be computed as follows:

26 (i) Multiply the taxpayer's net interest income from loans during the  
27 taxable year by a fraction, the numerator of which is the gross interest  
28 income during the taxable year from qualifying loans and the denominator  
29 of which is the gross interest income during the taxable year from all  
30 loans.

31 (ii) Multiply the amount determined in clause (i) by fifty percent.  
32 This product is the amount of the deduction allowed under this para-  
33 graph.

34 (B) (i) Net interest income from loans shall mean gross interest income  
35 from loans less gross interest expense from loans. Gross interest  
36 expense from loans is determined by multiplying gross interest expense  
37 by a fraction, the numerator of which is the average total value of  
38 loans owned by the thrift institution or community bank during the taxa-  
39 ble year and the denominator of which is the average total assets of the  
40 thrift institution or community bank during the taxable year.

41 (ii) Measurement of assets. (I) Total assets are those assets that are  
42 properly reflected on a balance sheet, computed in the same manner as is

43 required by the banking regulator of the taxpayers included in the  
44 combined return.

45 (II) Assets will only be included if the income or expenses of which  
46 are properly reflected (or would have been properly reflected if not  
47 fully depreciated or expensed, or depreciated or expensed to a nominal  
48 amount) in the computation of the taxpayer's entire net income for the  
49 taxable year. Assets will not include deferred tax assets and intangible  
50 assets identified as "goodwill".

51 (III) Tangible real and personal property, such as buildings, land,  
52 machinery, and equipment shall be valued at cost. Leased assets will be  
53 valued at the annual lease payment multiplied by eight. Intangible  
54 property, such as loans and investments, shall be valued at book value  
55 exclusive of reserves.

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1 (IV) Average assets are computed using the assets measured on the  
2 first day of the taxable year, and on the last day of each subsequent  
3 quarter of the taxable year or month or day during the taxable year.

4 (C) A qualifying loan is a loan that meets the conditions specified in  
5 subclause (i) of this clause and subclause (ii) of this clause.

6 (i) The loan is originated by the qualified community bank or small  
7 thrift institution or purchased by the qualified community bank or small  
8 thrift institution immediately after its origination in connection with  
9 a commitment to purchase made by the bank or thrift institution prior to  
10 the loan's origination.

11 (ii) The loan is a small business loan or a residential mortgage loan,  
12 the principal amount of which loan is five million dollars or less, and  
13 either the borrower is located in this state as determined under section  
14 two hundred ten-A of this article and the loan is not secured by real  
15 property, or the loan is secured by real property located in New York.

16 (iii) A loan that meets the definition of a qualifying loan in a prior  
17 taxable year (including years prior to the effective date of this para-  
18 graph) remains a qualifying loan in taxable years during and after which  
19 such loan is acquired by another corporation in the taxpayer's combined  
20 reporting group under section two hundred ten-C of this article.

21 (t) A small thrift institution or a qualified community bank, as  
22 defined in paragraph (s) of this subdivision, that maintained a captive  
23 REIT on April first, two thousand fourteen shall utilize a REIT  
24 subtraction equal to one hundred sixty percent of the dividends paid  
25 deductions allowed to that captive REIT for the taxable year for federal  
26 income tax purposes and shall not be allowed to utilize the subtraction  
27 modification for qualified residential loan portfolios under paragraph  
28 (r) of this subdivision or the subtraction modification for community  
29 banks and small thrifts under paragraph (s) of this subdivision in any  
30 tax year in which such thrift institution or community bank maintains  
31 that captive REIT.

32 10. The term "calendar year" means a period of twelve calendar months  
33 (or any shorter period beginning on the date the taxpayer becomes  
34 subject to the tax imposed by this article) ending on the thirty-first  
35 day of December, provided the taxpayer keeps its books on the basis of  
36 such period or on the basis of any period ending on any day other than  
37 the last day of a calendar month, or provided the taxpayer does not keep  
38 books, and includes, in case the taxpayer changes the period on the  
39 basis of which it keeps its books from a fiscal year to a calendar year,  
40 the period from the close of its last old fiscal year up to and includ-  
41 ing the following December thirty-first. The term "fiscal year" means a  
42 period of twelve calendar months (or any shorter period beginning on the  
43 date the taxpayer becomes subject to the tax imposed by this article)  
44 ending on the last day of any month other than December, provided the  
45 taxpayer keeps its books on the basis of such period, and includes, in  
46 case the taxpayer changes the period on the basis of which it keeps its  
47 books from a calendar year to a fiscal year or from one fiscal year to  
48 another fiscal year, the period from the close of its last old calendar

49 or fiscal year up to the date designated as the close of its new fiscal  
50 year.

51 11. The term "tangible personal property" means corporeal personal  
52 property, such as machinery, tools, implements, goods, wares and  
53 merchandise, and does not mean money, deposits in banks, shares of  
54 stock, bonds, notes, credits or evidences of an interest in property and  
55 evidences of debt.

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1 12. The term elected or appointed officer shall include the chairman,  
2 president, vice-president, secretary, assistant secretary, treasurer,  
3 assistant treasurer, comptroller, and also any other officer, irrespec-  
4 tive of his title, who is charged with and performs any of the regular  
5 functions of any such officer, unless the total compensation of such  
6 officer is derived exclusively from the receipt of commissions. A direc-  
7 tor shall be considered an elected or appointed officer only if he  
8 performs duties ordinarily performed by an officer.

9 ~~[19. The term "fulfillment services" shall mean any of the following~~  
10 ~~services performed by an entity on its premises on behalf of a purchas-~~  
11 ~~er:~~

12 ~~(a) the acceptance of orders electronically or by mail, telephone,~~  
13 ~~telefax or internet;~~

14 ~~(b) responses to consumer correspondence or inquiries electronically~~  
15 ~~or by mail, telephone, telefax or internet;~~

16 ~~(c) billing and collection activities; or~~

17 ~~(d) the shipment of orders from an inventory of products offered for~~  
18 ~~sale by the purchaser.]~~

19 § 5. Subdivisions 1, 2, 2-a, 4, 5, 6, 7 and 8 of section 209 of the  
20 tax law, subdivisions 1 and 6 as amended by chapter 817 of the laws of  
21 1987, subdivision 2 as amended by chapter 75 of the laws of 1998, subdi-  
22 vision 2-a as added by chapter 340 of the laws of 1998, subdivision 4 as  
23 amended by section 27 of part S of this act, subdivisions 5 and 7 as  
24 amended by section 2 of part FF-1 of chapter 57 of the laws of 2008, and  
25 subdivision 8 as added by section 1 of part O of chapter 61 of the laws  
26 of 2006, are amended to read as follows:

27 1. (a) For the privilege of exercising its corporate franchise, or of  
28 doing business, or of employing capital, or of owning or leasing proper-  
29 ty in this state in a corporate or organized capacity, or of maintaining  
30 an office in this state, or of deriving receipts from activity in this  
31 state, for all or any part of each of its fiscal or calendar years,  
32 every domestic or foreign corporation, except corporations specified in  
33 subdivision four of this section, shall annually pay a franchise tax,  
34 upon the basis of its ~~entire net~~ business income base, or upon such  
35 other basis as may be applicable as hereinafter provided, for such  
36 fiscal or calendar year or part thereof, on a report which shall be  
37 filed, except as hereinafter provided, on or before the fifteenth day of  
38 March next succeeding the close of each such year, or, in the case of a  
39 corporation which reports on the basis of a fiscal year, within two and  
40 one-half months after the close of such fiscal year, and shall be paid  
41 as hereinafter provided.

42 (b) A corporation is deriving receipts from activity in this state if  
43 it has receipts within this state of one million dollars or more in the  
44 taxable year. For purposes of this section, the term "receipts" means  
45 the receipts that are subject to the apportionment rules set forth in  
46 section two hundred ten-A of this article, and the term "receipts within  
47 this state" means the receipts included in the numerator of the appor-  
48 tionment factor determined under section two hundred ten-A of this arti-  
49 cle. For purposes of this paragraph, receipts from processing credit  
50 card transactions for merchants include merchant discount fees received  
51 by the corporation.

52 (c) A corporation is doing business in this state if (i) it has issued  
53 credit cards to one thousand or more customers who have a mailing  
54 address within this state as of the last day of its taxable year, (ii)

1 locations in this state to whom the corporation remitted payments for  
2 credit card transactions during the taxable year, or (iii) the sum of  
3 the number of customers described in subparagraph (i) of this paragraph  
4 plus the number of locations covered by its contracts described in  
5 subparagraph (ii) of this paragraph equals one thousand or more. As used  
6 in this subdivision, the term "credit card" includes bank, credit, trav-  
7 el and entertainment cards.

8 (d) (i) A corporation with less than one million dollars but at least  
9 ten thousand dollars of receipts within this state in a taxable year  
10 that is part of a combined reporting group under section two hundred  
11 ten-C of this article is deriving receipts from activity in this state  
12 if the receipts within this state of the members of the combined report-  
13 ing group that have at least ten thousand dollars of receipts within  
14 this state in the aggregate meet the threshold set forth in paragraph  
15 (b) of this subdivision.

16 (ii) A corporation that does not meet any of the thresholds set forth  
17 in paragraph (c) of this subdivision but has at least ten customers, or  
18 locations, or customers and locations, as described in paragraph (c) of  
19 this subdivision, and is part of a combined reporting group under  
20 section two hundred ten-C of this article that is doing business in this  
21 state if the number of customers, locations, or customers and locations,  
22 within this state of the members of the combined reporting group that  
23 have at least ten customers, locations, or customers and locations,  
24 within this state in the aggregate meets any of the thresholds set forth  
25 in paragraph (c) of this subdivision.

26 (e) At the end of each year, the commissioner shall review the cumula-  
27 tive percentage change in the consumer price index. The commissioner  
28 shall adjust the receipt thresholds set forth in this subdivision if the  
29 consumer price index has changed by ten percent or more since January  
30 first, two thousand fifteen, or since the date that the thresholds were  
31 last adjusted under this subdivision. The thresholds shall be adjusted  
32 to reflect that cumulative percentage change in the consumer price  
33 index. The adjusted thresholds shall be rounded to the nearest one thou-  
34 sand dollars. As used in this paragraph, "consumer price index" means  
35 the consumer price index for all urban consumers (CPI-U) available form  
36 the bureau of labor statistics of the United States department of labor.  
37 Any adjustment shall apply to tax periods that begin after the adjust-  
38 ment is made.

39 (f) If a partnership is doing business, employing capital, owning or  
40 leasing property in this state, maintaining an office in the state, or  
41 deriving receipts from activity in this state, any corporation that is a  
42 partner in such partnership shall be subject to tax under this article  
43 as described in the regulations of the commissioner.

44 2. A foreign corporation shall not be deemed to be doing business,  
45 employing capital, owning or leasing property, or maintaining an office  
46 in this state, or deriving receipts from activity in this state, for the  
47 purposes of this article, by reason of (a) the maintenance of cash  
48 balances with banks or trust companies in this state, or (b) the owner-  
49 ship of shares of stock or securities kept in this state, if kept in a  
50 safe deposit box, safe, vault or other receptacle rented for the  
51 purpose, or if pledged as collateral security, or if deposited with one  
52 or more banks or trust companies, or brokers who are members of a recog-  
53 nized security exchange, in safekeeping or custody accounts, or (c) the  
54 taking of any action by any such bank or trust company or broker, which  
55 is incidental to the rendering of safekeeping or custodian service to  
56 such corporation, or (d) the maintenance of an office in this state by

1 one or more officers or directors of the corporation who are not employ-

ees of the corporation if the corporation otherwise is not doing business in this state, and does not employ capital or own or lease property in this state, or (e) the keeping of books or records of a corporation in this state if such books or records are not kept by employees of such corporation and such corporation does not otherwise do business, employ capital, own or lease property or maintain an office in this state, or (f) ~~[the use of fulfillment services of a person other than an affiliated person and the ownership of property stored on the premises of such person in conjunction with such services, or (g)]~~ any combination of the foregoing activities. ~~[For purposes of this subdivision, persons are affiliated persons with respect to each other where one of such persons has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of such persons by another person or by a group of other persons which are affiliated persons with respect to each other. The term "person" in the preceding sentence and in paragraph (f) of this subdivision shall have the meaning ascribed thereto by subdivision (a) of section eleven hundred one of this chapter.]~~

2-a. An alien corporation shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in this state, for the purposes of this article, if its activities in this state are limited solely to (a) investing or trading in stocks and securities for its own account within the meaning of clause (ii) of subparagraph (A) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code or (b) investing or trading in commodities for its own account within the meaning of clause (ii) of subparagraph (B) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code or (c) any combination of activities described in paragraphs (a) and (b) of this subdivision. An alien corporation that under any provision of the internal revenue code is not treated as a "domestic corporation" as defined in section seven thousand seven hundred one of such code and has no effectively connected income for the taxable year pursuant to clause (iv) of the opening paragraph of subdivision nine of section two hundred eight of this article shall not be subject to tax under this article for that taxable year. For purposes of this ~~[subdivision]~~ article, an alien corporation is a corporation organized under the laws of a country, or any political subdivision thereof, other than the United States, or organized under the laws of a possession, territory or commonwealth of the United States.

4. Corporations liable to tax under sections one hundred eighty-three to one hundred eighty-four-a, inclusive, corporations taxable under ~~[articles thirty-two and]~~ article thirty-three of this chapter, any trust company organized under a law of this state all of the stock of which is owned by not less than twenty savings banks organized under a law of this state, ~~[bank holding companies filing a combined return in accordance with subsection (f) of section fourteen hundred sixty-two of this chapter,~~ a captive REIT or a captive RIC filing a combined return under ~~[either subsection (f) of section fourteen hundred sixty-two or]~~ subdivision (f) of section fifteen hundred fifteen of this chapter, and housing companies organized and operating pursuant to the provisions of article two or article five of the private housing finance law and housing development fund companies organized pursuant to the provisions of S. 6359--D 38 A. 8559--D

article eleven of the private housing finance law shall not be subject to tax under this article.

5. For any taxable year of a real estate investment trust as defined in section eight hundred fifty-six of the internal revenue code in which such trust is subject to federal income taxation under section eight hundred fifty-seven of such code, such trust shall be subject to a tax computed under either paragraph (a) ~~[, (c)]~~ or (d) of subdivision one of



8 section two hundred ten of this chapter, whichever is [~~greatest~~  
9 greater, and shall not be subject to any tax under article [~~thirty-two~~  
10 ~~or article~~] thirty-three of this chapter except for a captive REIT  
11 required to file a combined return under [~~subdivision (f) of section~~  
12 ~~fourteen hundred sixty-two or~~] subdivision (f) of section fifteen  
13 hundred fifteen of this chapter. In the case of such a real estate  
14 investment trust, including a captive REIT as defined in section two of  
15 this chapter, the term "entire net income" means "real estate investment  
16 trust taxable income" as defined in paragraph two of subdivision (b) of  
17 section eight hundred fifty-seven (as modified by section eight hundred  
18 fifty-eight) of the internal revenue code plus the amount taxable under  
19 paragraph three of subdivision (b) of section eight hundred fifty-seven  
20 of such code, subject to the [~~modification~~] modifications required by  
21 subdivision nine of section two hundred eight of this article [~~other~~  
22 ~~than the modification required by subparagraph two of paragraph (a)~~  
23 ~~thereof) including the modifications required by paragraphs (d) and (e)~~  
24 ~~of subdivision three of section two hundred ten of this article~~].

25 6. For any taxable year of a DISC, not exempt from tax under paragraph  
26 (i) of subdivision nine of section two hundred eight of this article,  
27 the taxes imposed by subdivision one of this section shall be computed  
28 only under either paragraph (b) or (d) of subdivision one of section two  
29 hundred ten of this chapter, whichever is greater[~~, and paragraph (e) of~~  
30 ~~such subdivision~~].

31 7. For any taxable year, beginning on or after January first, nineteen  
32 hundred eighty of a regulated investment company, as defined in section  
33 eight hundred fifty-one of the internal revenue code, in which such  
34 company is subject to federal income taxation under section eight  
35 hundred fifty-two of such code, such company shall be subject to a tax  
36 computed under either paragraph (a) [~~, (e)~~] or (d) of subdivision one of  
37 section two hundred ten of this chapter, whichever is [~~greatest~~  
38 greater, and shall not be subject to any tax under article [~~thirty-two~~  
39 ~~or article~~] thirty-three of this chapter except for a captive RIC  
40 required to file a combined return under [~~subdivision (f) of section~~  
41 ~~fourteen hundred sixty-two or~~] subdivision (f) of section fifteen  
42 hundred fifteen of this chapter. In the case of such a regulated invest-  
43 ment company, including a captive RIC as defined in section two of this  
44 chapter, the term "entire net income" means "investment company taxable  
45 income" as defined in paragraph two of subdivision (b) of section eight  
46 hundred fifty-two, as modified by section eight hundred fifty-five, of  
47 the internal revenue code plus the amount taxable under paragraph three  
48 of subdivision (b) of section eight hundred fifty-two of such code  
49 subject to the [~~modification~~] modifications required by subdivision nine  
50 of section two hundred eight of this chapter[~~, other than the modifica-~~  
51 ~~tion required by subparagraph two of paragraph (a) and by paragraph (f)~~  
52 ~~thereof, including the modification required by paragraphs (d) and (e)~~  
53 ~~of subdivision three of section two hundred ten of this chapter~~].

54 8. For any taxable year beginning on or after January first, two thou-  
55 sand six, a corporation that is no longer doing business, employing  
56 capital, or owning or leasing property, or deriving receipts from activ-  
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1 ity in this state in a corporate or organized capacity that has filed a  
2 final tax return with the department for the last tax year it was doing  
3 business and has no outstanding tax liability for such final tax return  
4 or any tax return for prior tax years shall be exempt from all taxes  
5 imposed by paragraph (d) of subdivision one of section two hundred ten  
6 of this article for tax years following the last year such corporation  
7 was doing business.

8 § 6. Section 209-A of the tax law is REPEALED.

9 § 7. The section heading and subdivision 1 of section 209-B of the tax  
10 law, the section heading as amended by chapter 11 of the laws of 1983  
11 and subdivision 1 as amended by section 4 of part A of chapter 59 of the  
12 laws of 2013, are amended to read as follows:



13 ~~[Temporary metropolitan]~~ Metropolitan transportation business tax  
14 surcharge. 1. (a) For the privilege of exercising its corporate fran-  
15 chise, or of doing business, or of employing capital, or of owning or  
16 leasing property in a corporate or organized capacity, or of maintaining  
17 an office, or of deriving receipts from activity in the metropolitan  
18 commuter transportation district, for all or any part of its taxable  
19 year, there is hereby imposed on every corporation, other than a New  
20 York S corporation, subject to tax under section two hundred nine of  
21 this article, or any receiver, referee, trustee, assignee or other fidu-  
22 ciary, or any officer or agent appointed by any court, who conducts the  
23 business of any such corporation, ~~[for the taxable years commencing on~~  
24 ~~or after January first, nineteen hundred eighty-two but ending before~~  
25 ~~December thirty-first, two thousand eighteen,]~~ a tax surcharge, in addi-  
26 tion to the tax imposed under section two hundred nine of this article,  
27 to be computed at the rate of ~~[eighteen percent of the tax imposed under~~  
28 ~~such section two hundred nine for such taxable years or any part of such~~  
29 ~~taxable years ending before December thirty-first, nineteen hundred~~  
30 ~~eighty-three after the deduction of any credits otherwise allowable~~  
31 ~~under this article, and at the rate of]~~ seventeen percent of the tax  
32 imposed under such section for such taxable years or any part of such  
33 taxable years ending on or after December thirty-first, nineteen hundred  
34 eighty-three and before January first, two thousand fifteen after the  
35 deduction of any credits otherwise allowable under this article~~+~~  
36 ~~provided, however, that~~, at the rate of twenty-five and six-tenths  
37 percent of the tax imposed under such section for taxable years begin-  
38 ning on or after January first, two thousand fifteen and before January  
39 first, two thousand sixteen before the deduction of any credits other-  
40 wise allowable under this article, and at the rate determined by the  
41 commissioner pursuant to paragraph (f) of this subdivision of the tax  
42 imposed under such section, for taxable years beginning on or after  
43 January first, two thousand sixteen before the deduction of any credits  
44 otherwise allowable under this article. However, such ~~[rates]~~ rate of  
45 tax surcharge shall be applied only to that portion of the tax imposed  
46 under section two hundred nine of this article ~~[after]~~ before the  
47 deduction of any credits otherwise allowable under this article which is  
48 attributable to the taxpayer's business activity carried on within the  
49 metropolitan commuter transportation district; and provided, further,  
50 ~~[that the tax surcharge imposed by this section shall not be imposed~~  
51 ~~upon any taxpayer for more than four hundred thirty-two months. Provided~~  
52 ~~however, that for taxable years commencing on or after July first, nine-~~  
53 ~~teen hundred ninety-eight, such surcharge shall be calculated as if the~~  
54 ~~tax imposed under section two hundred ten of this article were imposed~~  
55 ~~under the law in effect for taxable years commencing on or after July~~  
56 ~~first, nineteen hundred ninety-seven and before July first, nineteen~~

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1 ~~hundred ninety-eight. Provided however, that for taxable years commenc-~~  
2 ~~ing on or after January first, two thousand seven, such surcharge shall~~  
3 ~~be calculated using the highest of the tax bases imposed pursuant to~~  
4 ~~paragraphs (a), (b), (c) or (d) of subdivision one of section two~~  
5 ~~hundred ten of this article and the amount imposed under paragraph (e)~~  
6 ~~of subdivision one of such section two hundred ten, for the taxable~~  
7 ~~year; and, provided further that, if such highest amount is the tax base~~  
8 ~~imposed under paragraph (a), (b) or (c) of such subdivision, then the~~  
9 ~~surcharge shall be computed as if the tax rates and limitations under~~  
10 ~~such paragraph were the tax rates and limitations under such paragraph~~  
11 ~~in effect for taxable years commencing on or after July first, nineteen~~  
12 ~~hundred ninety-seven and before July first, nineteen hundred ninety-~~  
13 ~~eight]~~ the surcharge computed on a combined report shall include a  
14 surcharge on the fixed dollar minimum tax for each member of the  
15 combined group subject to the surcharge under this subdivision.

16 (b) A corporation is deriving receipts from activity in the metropol-  
17 itan commuter transportation district if it has receipts within the

18 metropolitan commuter transportation district of one million dollars or  
19 more in a taxable year. For purposes of this section, the term  
20 "receipts" means the receipts that are subject to the apportionment  
21 rules set forth in section two hundred ten-A of this article, and the  
22 term "receipts within the metropolitan commuter transportation district"  
23 means the receipts included in the numerator of the apportionment factor  
24 determined under subdivision two of this section. For purposes of this  
25 paragraph, receipts from processing credit card transactions for  
26 merchants include merchant discount fees received by the corporation.

27 (c) A corporation is doing business in the metropolitan commuter  
28 transportation district if (i) it has issued credit cards to one thou-  
29 sand or more customers who have a mailing address within the metropol-  
30 itan commuter transportation district as of the last day of its taxable  
31 year, (ii) it has merchant customer contracts with merchants and the  
32 total number of locations covered by those contracts equals one thousand  
33 or more locations in the metropolitan commuter transportation district  
34 to whom the corporation remitted payments for credit card transactions  
35 during the taxable year, or (iii) the sum of the number of customers  
36 described in subparagraph (i) of this paragraph plus the number of  
37 locations covered by its contracts described in subparagraph (ii) of  
38 this paragraph equals one thousand or more. As used in this paragraph,  
39 the term "credit card" includes bank, credit, travel and entertainment  
40 cards.

41 (d) (i) A corporation with less than one million dollars but at least  
42 ten thousand dollars of receipts within the metropolitan commuter trans-  
43 portation district in a taxable year that is part of a combined report-  
44 ing group under section two hundred ten-C of this article is deriving  
45 receipts from activity in the metropolitan commuter transportation  
46 district if the receipts within the metropolitan commuter transportation  
47 district of the members of the combined reporting group that have at  
48 least ten thousand dollars of receipts within the metropolitan commuter  
49 transportation district in the aggregate meet the threshold set forth in  
50 paragraph (b) of this subdivision.

51 (ii) A corporation that does not meet any of the thresholds set forth  
52 in paragraph (c) of this subdivision but has at least ten customers, or  
53 locations, or customers and locations, as described in paragraph (c),  
54 and is part of a combined reporting group under section two hundred  
55 ten-C of this article that is doing business in the metropolitan commu-  
56 ter transportation district if the number of customers, locations, or

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1 customers and locations, within the metropolitan commuter transportation  
2 district of the members of the combined reporting group that have at  
3 least ten customers, locations, or customers and locations, within the  
4 metropolitan commuter transportation district in the aggregate meets any  
5 of the thresholds set forth in paragraph (c) of this subdivision.

6 (e) At the end of each year, the commissioner shall review the cumula-  
7 tive percentage change in the consumer price index. The commissioner  
8 shall adjust the receipt thresholds set forth in this subdivision if the  
9 consumer price index has changed by ten percent or more since the Janu-  
10 ary first, two thousand fifteen or since the date that the thresholds  
11 were last adjusted under this subdivision. The thresholds shall be  
12 adjusted to reflect that cumulative percentage change in the consumer  
13 price index. The adjusted thresholds shall be rounded to the nearest one  
14 thousand dollars. As used in this paragraph, "consumer price index"  
15 means the consumer price index for all urban consumers (CPI-U) available  
16 from the bureau of labor statistics of the United States department of  
17 labor. Any adjustment shall apply to tax periods that begin after the  
18 adjustment is made.

19 (f) The commissioner shall determine the rate of tax for taxable years  
20 beginning on or after January first, two thousand sixteen by adjusting  
21 the rate for taxable years beginning on or after January first, two  
22 thousand fifteen and before January first, two thousand sixteen as

23 necessary to ensure that the receipts attributable to such surcharge, as  
24 impacted by the chapter of the laws of two thousand fourteen which added  
25 this paragraph, will meet and not exceed the financial projections for  
26 state fiscal year two thousand sixteen-two thousand seventeen, as  
27 reflected in state fiscal year two thousand fifteen-two thousand sixteen  
28 enacted budget. The commissioner shall annually determine the rate ther-  
29 eafter using the financial projections for the state fiscal year that  
30 commences in the year for which the rate is to be set as reflected in  
31 the enacted budget for the fiscal year commencing on the previous April  
32 first.

33 § 8. Subdivision 2 of section 209-B of the tax law, as amended by  
34 chapter 11 of the laws of 1983, paragraph (a) as amended by chapter 760  
35 of the laws of 1992 and subparagraph 2 of paragraph (b) as amended by  
36 section 3 of part K of chapter 63 of the laws of 2000, is amended to  
37 read as follows:

38 2. The portion of the taxpayer's business activity carried on within  
39 the metropolitan commuter transportation district shall be determined by  
40 multiplying the tax imposed under section two hundred nine of this arti-  
41 cle before the deduction of any credits otherwise allowable under this  
42 article by a percentage to be determined as follows:

43 (a) ascertaining the percentage which the average value of the taxpay-  
44 er's real and tangible personal property, whether owned or rented to it,  
45 within the metropolitan commuter transportation district during the  
46 period covered by its report bears to the average value of all the  
47 taxpayer's real and tangible personal property, whether owned or rented  
48 to it, within the state during such period; provided that the term  
49 "value of the taxpayer's real and tangible personal property" shall  
50 ~~[have the same meaning as is ascribed to that term by subparagraph one~~  
51 ~~of paragraph (a) of subdivision three of section two hundred ten]~~ mean  
52 the adjusted bases of such properties for federal income tax purposes  
53 (except that in the case of rented property such value shall mean the  
54 product of (i) eight and (ii) the gross rents payable for the rental of  
55 such property during the taxable year); provided, however, that the  
56 taxpayer may make a one-time, revocable election to use fair market

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1 value as the value of all of its real and tangible personal property,  
2 provided that such election is made on or before the due date for filing  
3 a report under section two hundred eleven for the taxpayer's first taxa-  
4 ble year commencing on or after January first, two thousand fifteen and  
5 provided that such election shall not apply to any taxable year with  
6 respect to which the taxpayer is included on a combined report unless  
7 each of the taxpayers included on such report has made such an election  
8 which remains in effect for such year;

9 (b) ascertaining the percentage ~~[which the receipts of the taxpayer,~~  
10 ~~computed on the cash or accrual basis according to the method of~~  
11 ~~accounting used in the computation of its entire net income, arising~~  
12 ~~during such period from:~~

13 ~~(1) sales of its tangible personal property where shipments are made~~  
14 ~~to points within the metropolitan commuter transportation district,~~

15 ~~(2) services performed within the metropolitan commuter transportation~~  
16 ~~district, provided, however, that (i) in the case of a taxpayer engaged~~  
17 ~~in the business of publishing newspapers or periodicals, receipts aris-~~  
18 ~~ing from sales of advertising contained in such newspapers and period-~~  
19 ~~icals shall be deemed to arise from services performed within the metro-~~  
20 ~~politan commuter transportation district to the extent that such~~  
21 ~~newspapers and periodicals are delivered to points within the metropol-~~  
22 ~~itan commuter transportation district, (ii) receipts from an investment~~  
23 ~~company from the sale of management, administration or distribution~~  
24 ~~services to such investment company shall be deemed to arise from~~  
25 ~~services performed within the metropolitan commuter transportation~~  
26 ~~district to the extent set forth in subparagraph six of paragraph (a) of~~  
27 ~~subdivision three of section two hundred ten of this chapter (except~~

28 ~~that references in such subparagraph six to the state shall be deemed,~~  
29 ~~for purposes of application to this clause, to be references to the~~  
30 ~~metropolitan commuter transportation district), (iii) in the case of~~  
31 ~~taxpayers principally engaged in the activity of air freight forwarding~~  
32 ~~acting as principal and like indirect air carriage receipts arising from~~  
33 ~~such activity shall arise from services performed within the metropol-~~  
34 ~~itan commuter transportation district as follows: one hundred percent of~~  
35 ~~such receipts if both the pickup and delivery associated with such~~  
36 ~~receipts are made in the metropolitan commuter transportation district~~  
37 ~~and fifty percent of such receipts if either the pickup or delivery~~  
38 ~~associated with such receipts is made in the metropolitan commuter~~  
39 ~~transportation district, and (iv) in the case of a taxpayer which is a~~  
40 ~~registered securities or commodities broker or dealer, the receipts~~  
41 ~~specified in subparagraph nine of paragraph (a) of subdivision three of~~  
42 ~~section two hundred ten of this article shall be deemed to arise from~~  
43 ~~services performed within the metropolitan commuter transportation~~  
44 ~~district to the extent set forth in such subparagraph nine (except that~~  
45 ~~references in such subparagraph nine to the state shall be deemed, for~~  
46 ~~purposes of the application of this clause, to be references to the~~  
47 ~~metropolitan commuter transportation district),~~

48 ~~(3) rentals from property situated and royalties from the use of~~  
49 ~~patents or copyrights within the metropolitan commuter transportation~~  
50 ~~district, and receipts from the sales of rights for closed-circuit and~~  
51 ~~cable television transmissions of an event (other than events occurring~~  
52 ~~on a regularly scheduled basis) taking place within the metropolitan~~  
53 ~~commuter transportation district as a result of the rendition of~~  
54 ~~services by employees of the corporation, as athletes, entertainers or~~  
55 ~~performing artists, but only to the extent that such receipts are~~

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1 ~~attributable to such transmissions received or exhibited within the~~  
2 ~~metropolitan commuter transportation district, and~~

3 ~~(4) all other business receipts earned within the metropolitan commu-~~  
4 ~~ter transportation district, bear to the total amount of the taxpayer's~~  
5 ~~receipts, similarly computed, arising during such period from all sales~~  
6 ~~of its tangible personal property, services, rentals, royalties,~~  
7 ~~receipts from the sales of rights for closed-circuit and cable tele-~~  
8 ~~vision transmissions and all other business transactions, within the~~  
9 ~~state;] of the taxpayer's receipts within the metropolitan commuter~~  
10 ~~transportation district pursuant to the method prescribed in section two~~  
11 ~~hundred ten-A of this article, except that~~

12 ~~(i) the numerator of the apportionment fraction under such section two~~  
13 ~~hundred ten-A shall be the denominator of the apportionment fraction~~  
14 ~~under this paragraph,~~

15 ~~(ii) the numerator of the apportionment fraction under this paragraph~~  
16 ~~shall be determined by applying the rules in such section two hundred~~  
17 ~~ten-A relating to the numerator of the apportionment fraction as if~~  
18 ~~those rules referenced the metropolitan commuter transportation district~~  
19 ~~rather than this state,~~

20 ~~(iii) to the extent that a provision in such section two hundred ten-A~~  
21 ~~provides that eight percent of the receipts specified in that provision~~  
22 ~~should be included in the numerator of the apportionment fraction, nine-~~  
23 ~~ty percent of such eight percent amount shall be considered within the~~  
24 ~~metropolitan commuter transportation district and one hundred percent of~~  
25 ~~such eight percent amount shall be considered to be within the state,~~  
26 ~~and~~

27 ~~(iv) to the extent that a provision in such section two hundred ten-A~~  
28 ~~of this article provides that the receipts specified in that provision~~  
29 ~~shall not be included in the numerator of the apportionment fraction~~  
30 ~~under such section two hundred ten-A, such receipts shall not be~~  
31 ~~included in determining the portion of the taxpayer's business activity~~  
32 ~~carried on within the metropolitan commuter transportation district;~~

33 ~~(c) ascertaining the percentage of the total wages, salaries and other~~

34 personal service compensation, similarly computed, during such period,  
35 of employees within the metropolitan commuter transportation district,  
36 except general executive officers, to the total wages, salaries and  
37 other personal service compensation, similarly computed, during such  
38 period, of all the taxpayer's employees within the state, except general  
39 executive officers; and

40 (d) adding together the percentages so determined and dividing the  
41 result by the number of percentages.

42 § 9. Intentionally omitted.

43 § 10. Subdivisions 2-a and 2-b of section 209-B of the tax law are  
44 REPEALED.

45 § 11. Subdivisions 3 and 5 of section 209-B of the tax law, subdivi-  
46 sion 3 as amended by chapter 11 of the laws of 1983 and subdivision 5 as  
47 amended by chapter 166 of the laws of 1991, are amended to read as  
48 follows:

49 3. A corporation shall not be deemed to be doing business, employing  
50 capital, owning or leasing property, or maintaining an office, or deriv-  
51 ing receipts from activity in the metropolitan commuter transportation  
52 district, for the purposes of this section, by reason of (a) the mainte-  
53 nance of cash balances with banks or trust companies in the metropolitan  
54 commuter transportation district, or (b) the ownership of shares of  
55 stock or securities kept in the metropolitan commuter transportation  
56 district, if kept in a safe deposit box, safe, vault or other receptacle  
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1 rented for the purpose, or if pledged as collateral security, or if  
2 deposited with one or more banks or trust companies, or brokers who are  
3 members of a recognized security exchange, in safekeeping or custody  
4 accounts, or (c) the taking of any action by any such bank or trust  
5 company or broker, which is incidental to the rendering of safekeeping  
6 or custodian service to such corporation, or (d) the maintenance of an  
7 office in the metropolitan commuter transportation district by one or  
8 more officers or directors of the corporation who are not employees of  
9 the corporation if the corporation otherwise is not doing business in  
10 the metropolitan commuter transportation district, and does not employ  
11 capital or own or lease property in the metropolitan commuter transpor-  
12 tation district, or (e) the keeping of books or records of a corporation  
13 in the metropolitan commuter transportation district if such books or  
14 records are not kept by employees of such corporation and such corpo-  
15 ration does not otherwise do business, employ capital, own or lease  
16 property or maintain an office in the metropolitan commuter transporta-  
17 tion district, or (f) any combination of the foregoing activities.

18 5. The provisions concerning reports under [~~section~~] sections two  
19 hundred ten-C and two hundred eleven shall be applicable to this  
20 section, except that for purposes of an automatic extension for six  
21 months for filing a report covering the tax surcharge imposed by this  
22 section, such automatic extension shall be allowed only if a taxpayer  
23 files with the commissioner an application for extension in such form as  
24 said commissioner may prescribe by regulation and pays on or before the  
25 date of such filing in addition to any other amounts required under this  
26 article, either ninety percent of the entire tax surcharge required to  
27 be paid under this section for the applicable period, or not less than  
28 the tax surcharge shown on the taxpayer's return for the preceding taxa-  
29 ble year, if such preceding taxable year was a taxable year of twelve  
30 months; provided, however, that in no event shall such amount be less  
31 than the product of the following three amounts: (1) the tax surcharge  
32 rate in effect for the taxable year pursuant to subdivision one of this  
33 section, (2) the fixed dollar minimum applicable to such taxpayer as  
34 determined under paragraph (d) of subdivision one of section two hundred  
35 ten of this chapter for the taxable year, and (3) the percentage deter-  
36 mined under subdivision two of this section for the preceding taxable  
37 year, unless the taxpayer was not subject to the tax surcharge imposed  
38 pursuant to this section with respect to such year, in which case such

39 percentage shall be deemed to be one hundred percent. The tax surcharge  
40 imposed by this section shall be payable to the commissioner in full at  
41 the time the report is required to be filed, and such tax surcharge or  
42 the balance thereof, imposed on any taxpayer which ceases to exercise  
43 its franchise or be subject to the tax surcharge imposed by this section  
44 shall be payable to the commissioner at the time the report is required  
45 to be filed, provided such tax surcharge of a domestic corporation which  
46 continues to possess its franchise shall be subject to adjustment as the  
47 circumstances may require; all other tax surcharges of any such taxpay-  
48 er, which pursuant to the foregoing provisions of this section would  
49 otherwise be payable subsequent to the time such report is required to  
50 be filed, shall nevertheless be payable at such time. All of the  
51 provisions of this article presently applicable are applicable to the  
52 tax surcharge imposed by this section.

53 § 12. Subdivision 1 of section 210 of the tax law, as added by chapter  
54 817 of the laws of 1987, the opening paragraph as amended by section 1  
55 of part D and paragraph (g) as amended by section 2 of part A of chapter  
56 63 of the laws of 2000, paragraph (a) as amended by section 2 of part N  
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1 of chapter 60 of the laws of 2007, subparagraph 2 of paragraph (b) as  
2 amended by section 1 of part GG-1 of chapter 57 of the laws of 2008,  
3 subparagraph 3 of paragraph (b) as added by section 2 of part Z of chap-  
4 ter 59 of the laws of 2013, subparagraph (ii) of paragraph (c) as  
5 amended by section 2 of part C and subparagraph 5 of paragraph (d) as  
6 added by section 3 of part C of chapter 56 of the laws of 2011, subpara-  
7 graph (vi) of paragraph (a) as amended by section 1 of part C of chapter  
8 56 of the laws of 2011, subparagraph (vii) as added by section 1 of part  
9 Z of chapter 59 of the laws of 2013, subparagraph (iii) of paragraph (c)  
10 as added by section 3 of part Z of chapter 59 of the laws of 2013,  
11 subparagraph 6 of paragraph (d) as added by section 4 of part Z of chap-  
12 ter 59 of the laws of 2013, paragraph (b) as amended by section 1 of  
13 part GG1, subparagraph 3 of paragraph (d) as amended by section 3 of  
14 part AA1, subparagraph 4 of paragraph (d) as added by section 2 of part  
15 AA1 and subparagraph 1 of paragraph (g) as amended by section 4 of part  
16 AA1 of chapter 57 of the laws of 2008, paragraph (c) as amended by  
17 section 10 of part A and subparagraph 1 of paragraph (d) as amended by  
18 section 12 of part A of chapter 56 of the laws of 1998, paragraph (d) as  
19 amended by chapter 760 of the laws of 1992, paragraph (e) as amended by  
20 section 1 of part P of chapter 407 of the laws of 1999, and paragraph  
21 (f) as amended by section 2 of part E of chapter 61 of the laws of 2005,  
22 is amended to read as follows:

23 1. The tax imposed by subdivision one of section two hundred nine of  
24 this chapter shall be: (A) in the case of each taxpayer other than a New  
25 York S corporation or a qualified homeowners association, the [~~sum of~~  
26 ~~(1) the~~] highest of the amounts prescribed in paragraphs (a), (b), [~~(c)~~]  
27 and (d) of this subdivision [~~and (2) the amount prescribed in paragraph~~  
28 ~~(e) of this subdivision~~], (B) in the case of each New York S corpo-  
29 ration, the amount prescribed in paragraph [~~(g)~~] (d) of this subdivi-  
30 sion, and (C) in the case of a qualified homeowners association, the  
31 [~~sum of (1) the~~] highest of the amounts prescribed in paragraphs (a) [~~7~~]  
32 and (b) [~~and (c)~~] of this subdivision [~~and (2) the amount prescribed in~~  
33 ~~paragraph (e) of this subdivision~~]. For purposes of this paragraph, the  
34 term "qualified homeowners association" means a homeowners association,  
35 as such term is defined in subsection (c) of section five hundred twenty-  
36 eight of the internal revenue code without regard to subparagraph (E)  
37 of paragraph one of such subsection (relating to elections to be taxed  
38 pursuant to such section), which has no homeowners association taxable  
39 income, as such term is defined in subsection (d) of such section.  
40 Provided, however, that in the case of a small business taxpayer (other  
41 than a New York S corporation) as defined in paragraph (f) of this  
42 subdivision, for taxable years beginning before January first, two thou-  
43 sand sixteen, if the amount prescribed in such paragraph (b) is higher

44 than the amount prescribed in such paragraph (a) solely by reason of the  
45 application of the rate applicable to small business taxpayers, then  
46 with respect to such taxpayer the tax referred to in the previous  
47 sentence shall be [~~the sum of (1) the highest~~] higher of the amounts  
48 prescribed in paragraphs (a) [~~, (e)~~] and (d) of this subdivision [~~and (2)~~  
49 ~~the amount prescribed in paragraph (e) of this subdivision~~].

50 (a) [~~Entire net~~] Business income base. [~~For taxable years beginning~~  
51 ~~before July first, nineteen hundred ninety-nine, the amount prescribed~~  
52 ~~by this paragraph shall be computed at the rate of nine percent of the~~  
53 ~~taxpayer's entire net income base. For taxable years beginning after~~  
54 ~~June thirtieth, nineteen hundred ninety-nine and before July first, two~~  
55 ~~thousand, the amount prescribed by this paragraph shall be computed at~~  
56 ~~the rate of eight and one-half percent of the taxpayer's entire net~~  
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1 ~~income base. For taxable years beginning after June thirtieth, two thou-~~  
2 ~~sand and before July first, two thousand one, the amount prescribed by~~  
3 ~~this paragraph shall be computed at the rate of eight percent of the~~  
4 ~~taxpayer's entire net income base. For taxable years beginning after~~  
5 ~~June thirtieth, two thousand one and before January first, two thousand~~  
6 ~~seven, the amount prescribed by this paragraph shall be computed at the~~  
7 ~~rate of seven and one-half percent of the taxpayer's entire net income~~  
8 ~~base.] For taxable years beginning [~~on or after~~] before January first,  
9 two thousand [~~seven~~] sixteen, the amount prescribed by this paragraph  
10 shall be computed at the rate of seven and one-tenth percent of the  
11 taxpayer's [~~entire net~~] business income base. For taxable years begin-  
12 ning on or after January first, two thousand sixteen, the amount  
13 prescribed by this paragraph shall be six and one-half percent of the  
14 taxpayer's business income base. The taxpayer's [~~entire net~~] business  
15 income base shall mean the portion of the taxpayer's [~~entire net~~] busi-  
16 ness income allocated within the state as hereinafter provided [~~, subject~~  
17 ~~to any modification required by paragraphs (d) and (e) of subdivision~~  
18 ~~three of this section~~]. However, in the case of a small business taxpay-  
19 er, as defined in paragraph (f) of this subdivision, the amount  
20 prescribed by this paragraph shall be computed pursuant to subparagraph  
21 (iv) of this paragraph and in the case of a manufacturer, as defined in  
22 subparagraph (vi) of this paragraph, the amount prescribed by this para-  
23 graph shall be computed pursuant to subparagraph (vi) of this paragraph.~~

24 [~~(i) if the entire net income base is not more than two hundred thou-~~  
25 ~~sand dollars, (1) for taxable years beginning before July first, nine-~~  
26 ~~teen hundred ninety-nine, the amount shall be eight percent of the~~  
27 ~~entire net income base; (2) for taxable years beginning after June thir-~~  
28 ~~tieth, nineteen hundred ninety-nine and before July first, two thousand~~  
29 ~~three, the amount shall be seven and one-half percent of the entire net~~  
30 ~~income base; and (3) for taxable years beginning after June thirtieth,~~  
31 ~~two thousand three and before January first, two thousand five, the~~  
32 ~~amount shall be 6.85 percent of the entire net income base;~~

33 (ii) ~~if the entire net income base is more than two hundred thousand~~  
34 ~~dollars but not over two hundred ninety thousand dollars, (1) for taxa-~~  
35 ~~ble years beginning before July first, nineteen hundred ninety-nine, the~~  
36 ~~amount shall be the sum of (a) sixteen thousand dollars, (b) nine~~  
37 ~~percent of the excess of the entire net income base over two hundred~~  
38 ~~thousand dollars and (c) five percent of the excess of the entire net~~  
39 ~~income base over two hundred fifty thousand dollars; (2) for taxable~~  
40 ~~years beginning after June thirtieth, nineteen hundred ninety-nine and~~  
41 ~~before July first, two thousand, the amount shall be the sum of (a)~~  
42 ~~fifteen thousand dollars, (b) eight and one-half percent of the excess~~  
43 ~~of the entire net income base over two hundred thousand dollars and (c)~~  
44 ~~five percent of the excess of the entire net income base over two~~  
45 ~~hundred fifty thousand dollars; (3) for taxable years beginning after~~  
46 ~~June thirtieth, two thousand and before July first, two thousand one,~~  
47 ~~the amount shall be the sum of (a) fifteen thousand dollars, (b) eight~~  
48 ~~percent of the excess of the entire net income base over two hundred~~



49 ~~thousand dollars and (c) two and one-half percent of the excess of the~~  
50 ~~entire net income base over two hundred fifty thousand dollars; (4) for~~  
51 ~~taxable years beginning after June thirtieth, two thousand one and~~  
52 ~~before July first, two thousand three, the amount shall be seven and~~  
53 ~~one-half percent of the entire net income base; and (5) for taxable~~  
54 ~~years beginning after June thirtieth, two thousand three and before~~  
55 ~~January first, two thousand five, the amount shall be the sum of (a)~~  
56 ~~thirteen thousand seven hundred dollars, (b) 7.5 percent of the excess~~  
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1 ~~of the entire net income base over two hundred thousand dollars and (c)~~  
2 ~~3.25 percent of the excess of the entire net income base over two~~  
3 ~~hundred fifty thousand dollars;~~

4 ~~(iii) for taxable years beginning on or after January first, two thou-~~  
5 ~~sand five and ending before January first, two thousand seven, if the~~  
6 ~~entire net income base is not more than two hundred ninety thousand~~  
7 ~~dollars the amount shall be six and one-half percent of the entire net~~  
8 ~~income base; if the entire net income base is more than two hundred~~  
9 ~~ninety thousand dollars but not over three hundred ninety thousand~~  
10 ~~dollars the amount shall be the sum of (1) eighteen thousand eight~~  
11 ~~hundred fifty dollars, (2) seven and one-half percent of the excess of~~  
12 ~~the entire net income base over two hundred ninety thousand dollars but~~  
13 ~~not over three hundred ninety thousand dollars and (3) seven and one-~~  
14 ~~quarter percent of the excess of the entire net income base over three~~  
15 ~~hundred fifty thousand dollars but not over three hundred ninety thou-~~  
16 ~~sand dollars;]~~

17 (iv) for taxable years beginning [~~on or after~~ before] January first,  
18 two thousand [~~seven~~ sixteen], if the [~~entire net~~ business] income base  
19 is not more than two hundred ninety thousand dollars the amount shall be  
20 six and one-half percent of the [~~entire net~~ business] income base; if  
21 the [~~entire net~~ business] income base is more than two hundred ninety  
22 thousand dollars but not over three hundred ninety thousand dollars the  
23 amount shall be the sum of (1) eighteen thousand eight hundred fifty  
24 dollars, (2) seven and one-tenth percent of the excess of the [~~entire~~  
25 net] business income base over two hundred ninety thousand dollars but  
26 not over three hundred ninety thousand dollars and (3) four and thirty-  
27 five hundredths percent of the excess of the [~~entire net~~ business]  
28 income base over three hundred fifty thousand dollars but not over three  
29 hundred ninety thousand dollars;

30 (v) if the taxable period to which [~~subparagraphs (i), (ii), (iii),~~  
31 and] subparagraph (iv) of this paragraph [~~apply~~ applies] is less than  
32 twelve months, the amount prescribed by this paragraph shall be computed  
33 as follows:

34 (A) Multiply the [~~entire net~~ business] income base for such taxpayer  
35 by twelve;

36 (B) Divide the result obtained in (A) by the number of months in the  
37 taxable year;

38 (C) Compute an amount pursuant to [~~subparagraphs (i) and (ii)~~] subpar-  
39 agraph (iv) as if the result obtained in (B) were the taxpayer's [~~entire~~  
40 net] business income base;

41 (D) Multiply the result obtained in (C) by the number of months in the  
42 taxpayer's taxable year;

43 (E) Divide the result obtained in (D) by twelve.

44 (vi) for taxable years beginning on or after January [~~thirty-first~~  
45 first], two thousand [~~seven~~ fourteen], the amount prescribed by this  
46 paragraph for a taxpayer which is a qualified New York manufacturer,  
47 shall be computed at the rate of [~~six and one-half (6.5)~~ zero] percent  
48 of the taxpayer's [~~entire net~~ business] income base. [~~For taxable years~~  
49 ~~beginning on or after January first, two thousand twelve and before~~  
50 ~~January first, two thousand fifteen, the amount prescribed by this para-~~  
51 ~~graph for a taxpayer which is an eligible qualified New York manufactur-~~  
52 ~~er shall be computed at the rate of three and one-quarter (3.25) percent~~  
53 ~~of the taxpayer's entire net income base.] The term "manufacturer" shall~~



54 mean a taxpayer which during the taxable year is principally engaged in  
55 the production of goods by manufacturing, processing, assembling, refin-  
56 ing, mining, extracting, farming, agriculture, horticulture, floricult-  
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1 ture, viticulture or commercial fishing. However, the generation and  
2 distribution of electricity, the distribution of natural gas, and the  
3 production of steam associated with the generation of electricity shall  
4 not be qualifying activities for a manufacturer under this subparagraph.  
5 Moreover, the combined group shall be considered a "manufacturer" for  
6 purposes of this subparagraph only if the combined group during the  
7 taxable year is principally engaged in the activities set forth in this  
8 paragraph, or any combination thereof. A taxpayer or a combined group  
9 shall be "principally engaged" in activities described above if, during  
10 the taxable year, more than fifty percent of the gross receipts of the  
11 taxpayer or combined group, respectively, are derived from receipts from  
12 the sale of goods produced by such activities. In computing a combined  
13 group's gross receipts, intercorporate receipts shall be eliminated. A  
14 "qualified New York manufacturer" is a manufacturer which has property  
15 in New York which is described in [~~clause (A) of subparagraph (i) of~~  
16 ~~paragraph (b) of~~] subdivision [~~twelve of this section~~] one of section  
17 two hundred ten-B of this article and either (I) the adjusted basis of  
18 such property for federal income tax purposes at the close of the taxa-  
19 ble year is at least one million dollars or (II) all of its real and  
20 personal property is located in New York. [~~In addition, a "qualified New~~  
21 ~~York manufacturer" means a taxpayer which is defined as a qualified~~  
22 ~~emerging technology company under paragraph (c) of subdivision one of~~  
23 ~~section thirty-one hundred two-e of the public authorities law regard-~~  
24 ~~less of the ten million dollar limitation expressed in subparagraph one~~  
25 ~~of such paragraph (c). The commissioner shall establish guidelines and~~  
26 ~~criteria that specify requirements by which a manufacturer may be clas-~~  
27 ~~sified as an eligible qualified New York manufacturer. Criteria may~~  
28 ~~include but not be limited to factors such as regional unemployment, the~~  
29 ~~economic impact that manufacturing has on the surrounding community,~~  
30 ~~population decline within the region and median income within the region~~  
31 ~~in which the manufacturer is located. In establishing these guidelines~~  
32 ~~and criteria, the commissioner shall endeavor that the total annual cost~~  
33 ~~of the lower rates shall not exceed twenty-five million dollars.] A  
34 taxpayer or, in the case of a combined report, a combined group, that  
35 does not satisfy the principally engaged test may be a qualified New  
36 York manufacturer if the taxpayer or the combined group employs during  
37 the taxable year at least two thousand five hundred employees in manu-  
38 facturing in New York and the taxpayer or the combined group has proper-  
39 ty in the state used in manufacturing, the adjusted basis of which for  
40 federal income tax purposes at the close of the taxable year is at least  
41 one hundred million dollars.~~

42 (vii) For a taxpayer that is defined as a qualified [~~New York manufac-~~  
43 ~~turer, as defined in subparagraph (vi) of this paragraph,~~] emerging  
44 technology company under paragraph (c) of subdivision one of section  
45 thirty-one hundred two-e of the public authorities law regardless of the  
46 ten million dollar limitation expressed in subparagraph one of such  
47 paragraph (c) the rate at which the tax is computed in effect for taxa-  
48 ble years beginning on or after January first, two thousand thirteen and  
49 before January first, two thousand fourteen for such qualified [~~New York~~  
50 ~~manufacturers~~] emerging technology companies shall be reduced by nine  
51 and two-tenths percent for taxable years commencing on or after January  
52 first, two thousand fourteen and before January first, two thousand  
53 fifteen, twelve and three-tenths percent for taxable years commencing on  
54 or after January first, two thousand fifteen and before January first,  
55 two thousand sixteen, fifteen and four-tenths percent for taxable years  
56 commencing on or after January first, two thousand sixteen and before  
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1 January first, two thousand eighteen, and twenty-five percent for taxa-  
2 ble years beginning on or after January first, two thousand eighteen.

3 (viii) (A) In computing the business income base, taxpayers shall be  
4 allowed both a prior net operating loss conversion subtraction under  
5 this subparagraph and a net operating loss deduction under subparagraph  
6 (ix) of this paragraph. The prior net operating loss conversion  
7 subtraction computed under this subparagraph shall be applied against  
8 the business income base before the net operating loss deduction  
9 computed under subparagraph (ix) of this paragraph.

10 (B) Prior net operating loss conversion subtraction.

11 (1) Definitions.

12 (I) "Base year" means the last taxable year beginning on or after  
13 January first, two thousand fourteen and before January first, two thou-  
14 sand fifteen.

15 (II) "Unabsorbed net operating loss" means the unabsorbed portion of  
16 net operating loss as calculated under paragraph (f) of subdivision nine  
17 of section two hundred eight of this article or subsection (k-1) of  
18 section fourteen hundred fifty-three of this chapter as such sections  
19 were in effect on December thirty-first, two thousand fourteen, that was  
20 not deductible in previous taxable years and was eligible for carryover  
21 on the last day of the base year subject to the limitations for  
22 deduction under such sections, including any net operating loss  
23 sustained by the taxpayer during the base year.

24 (III) "Base year BAP" means the taxpayer's business allocation  
25 percentage as calculated under paragraph (a) of subdivision three of  
26 this section for the base year, or the taxpayer's allocation percentage  
27 as calculated under section fourteen hundred fifty-four of this chapter  
28 for purposes of calculating entire net income for the base year, as such  
29 sections were in effect on December thirty-first, two thousand fourteen.

30 (IV) "Base year tax rate" means the taxpayer's tax rate for the base  
31 year as calculated under this paragraph or subsection (a) of section  
32 fourteen hundred fifty-five of this chapter, as such provisions were in  
33 effect on December thirty-first, two thousand fourteen.

34 (2) The prior net operating loss conversion subtraction shall be  
35 calculated as follows:

36 (I) The taxpayer shall first calculate the tax value of its unabsorbed  
37 net operating loss for the base year. The value is equal to the product  
38 of (I) the amount of the taxpayer's unabsorbed net operating loss, (II)  
39 the taxpayer's base year BAP, and (III) the taxpayer's base year tax  
40 rate.

41 (II) The product determined under item (I) of this subclause is then  
42 divided by six and one-half percent, or in the case of a qualified New  
43 York manufacturer, five and seven-tenths percent. This result shall  
44 equal the taxpayer's prior net operating loss conversion subtraction  
45 pool.

46 (III) The taxpayer's prior net operating loss conversion subtraction  
47 for the taxable year shall equal one-tenth of its net operating loss  
48 conversion subtraction pool plus any amount of unused prior net operat-  
49 ing loss conversion subtraction from preceding taxable years. Provided,  
50 however, the prior net operating loss conversion subtraction of a small  
51 business corporation, as defined in paragraph (f) of this subdivision,  
52 as of the last day of the base year, shall not be subject to the one-  
53 tenth limitation in the previous sentence.

54 (IV) In lieu of the subtraction described in item (III) of this  
55 subclause, if the taxpayer so elects, the taxpayer's prior net operating  
56 loss conversion subtraction for the tax years beginning on or after

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1 January first, two thousand fifteen and before January first, two thou-  
2 sand seventeen shall equal in each year, not more than one-half of its  
3 net operating loss conversion subtraction pool. The taxpayer shall make  
4 such election on its return for the tax year beginning on or after Janu-  
5 ary first, two thousand fifteen and before January first, two thousand

6 sixteen by the due date for such return (determined with regard to  
7 extensions).

8 (3) Combined groups. (I) Where a taxpayer was properly included or  
9 required to be included in a combined report for the base year pursuant  
10 to section two hundred eleven of this article or a combined return under  
11 section fourteen hundred sixty-two of this chapter, as such sections  
12 were in effect on December thirty-first, two thousand fourteen, and the  
13 members of the combined group for the base year are the same as the  
14 members of the combined group for the taxable year immediately succeed-  
15 ing the base year, the combined group shall calculate its prior net  
16 operating loss conversion subtraction pool using the combined group's  
17 total unabsorbed net operating loss, base year BAP, and base year tax  
18 rate.

19 (II) If a combined group includes additional members in the taxable  
20 year immediately succeeding the base year that were not included in the  
21 combined group during the base year, each base year combined group and  
22 each taxpayer that filed separately in the base year but is included in  
23 the combined group in the taxable year succeeding the base year shall  
24 calculate its prior net operating loss conversion subtraction pool, and  
25 the sum of the pools shall be the combined prior net operating loss  
26 conversion subtraction pool of the combined group.

27 (III) If a taxpayer was properly included in a combined report for the  
28 base year and files a separate report in a subsequent taxable year, then  
29 the amount of remaining prior net operating loss conversion subtraction  
30 allowed to the taxpayer filing such separate report shall be propor-  
31 tionate to the amount that such taxpayer contributed to the prior net  
32 operating loss conversion subtraction pool on a combined basis, and the  
33 remaining prior net operating loss conversion subtraction allowed to the  
34 remaining members of the combined group shall be reduced accordingly.

35 (IV) If a taxpayer filed a separate report for the base year and is  
36 properly included in a combined report in a subsequent taxable year,  
37 then the prior net operating loss conversion subtraction pool of the  
38 combined group shall be increased by the amount of the remaining net  
39 operating loss conversion subtraction allowed to the taxpayer at the  
40 time the taxpayer is properly included in the combined group.

41 (4) The prior net operating loss conversion subtraction may be used to  
42 reduce the taxpayer's tax on allocated business income to the higher of  
43 the tax on the capital base under paragraph (b) of this subdivision or  
44 the fixed dollar minimum under paragraph (d) of this subdivision. Any  
45 amount of unused subtraction shall be carried forward to subsequent tax  
46 year or years until tax years beginning on or after January first, two  
47 thousand thirty-six. Such amount carried forward shall not be subject  
48 to the one-tenth limitation for the subsequent tax year or years. Howev-  
49 er, if the taxpayer elects to compute its prior net operating loss  
50 conversion subtraction pursuant to item (IV) of subclause two of this  
51 clause, the taxpayer shall not carry forward any amount of such  
52 subtraction beyond its tax year beginning on or after January first, two  
53 thousand sixteen and before January first, two thousand seventeen.

54 (ix) Net operating loss deduction. In computing the business income  
55 base, a net operating loss deduction shall be allowed. A net operating  
56 loss deduction is the amount of net operating loss or losses from one or  
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1 more taxable years that are carried forward to a particular income year.  
2 A net operating loss is the amount of a business loss incurred in a  
3 particular tax year multiplied by the apportionment factor for that year  
4 as determined under section two hundred ten-A of this article. The maxi-  
5 imum net operating deduction that is allowed in a taxable year is the  
6 amount that reduces the taxpayer's tax on allocated business income to  
7 the higher of the tax on the capital base or the fixed dollar minimum.  
8 Such deduction and loss are determined in accordance with the following:

9 (1) Such net operating loss deduction is not limited to the amount  
10 allowed under section one hundred seventy-two of the internal revenue

11 code or the amount that would have been allowed if the taxpayer had not  
12 made an election under subchapter S of chapter one of the internal  
13 revenue code.

14 (2) Such net operating loss deduction shall not include any net oper-  
15 ating loss incurred during any taxable year beginning prior to January  
16 first, two thousand fifteen, or during any taxable year in which the  
17 taxpayer was not subject to the tax imposed by this article.

18 (3) A taxpayer that files as part of a federal consolidated return but  
19 on a separate basis for purposes of this article must compute its  
20 deduction and loss as if it were filing on a separate basis for federal  
21 income tax purposes.

22 (4) A net operating loss may be carried forward to each of the twenty  
23 taxable years following the taxable year of the loss. A net operating  
24 loss may be carried back to each of the three taxable years preceding  
25 the taxable year of the loss; provided, however no loss can be carried  
26 back to a tax year prior to a tax year beginning on or after January,  
27 first, two thousand fifteen. A taxpayer must apply both of these limita-  
28 tions in computing such net operating loss deduction.

29 (5) Such net operating loss deduction shall not include any net oper-  
30 ating loss incurred during a New York S year; provided, however, a New  
31 York S year must be treated as a taxable year for purposes of determin-  
32 ing the number of taxable years to which a net operating loss may be  
33 carried forward.

34 (6) Where there are two or more allocated net operating losses, or  
35 portions thereof, carried forward to be deducted in one particular tax  
36 year from allocated business income, the earliest allocated loss  
37 incurred must be applied first.

38 (b) Capital base. (1) ~~The [amount prescribed by this paragraph for~~  
39 ~~taxable years beginning before January first, two thousand eight shall~~  
40 ~~be computed at .178 percent for each dollar of the taxpayer's total~~  
41 ~~business and investment capital, or the portion thereof allocated within~~  
42 ~~the state as hereinafter provided. For taxable years beginning on or~~  
43 ~~after January first, two thousand eight, the]~~ amount prescribed by this  
44 paragraph shall be computed at .15 percent for each dollar of the  
45 taxpayer's total business ~~[and investment]~~ capital, or the portion ther-  
46 eof allocated within the state as hereinafter provided for taxable years  
47 beginning before January first, two thousand sixteen. However, in the  
48 case of a cooperative housing corporation as defined in the internal  
49 revenue code, the applicable rate shall be .04 percent until taxable  
50 years beginning on or after January first, two thousand twenty. The  
51 rate of tax for subsequent tax years shall be as follows: .125 percent  
52 for taxable years beginning on or after January first, two thousand  
53 sixteen and before January first, two thousand seventeen; .100 percent  
54 for taxable years beginning on or after January first, two thousand  
55 seventeen and before January first, two thousand eighteen; .075 percent  
56 for taxable years beginning on or after January first, two thousand

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1 eighteen and before January first, two thousand nineteen; .050 percent  
2 for taxable years beginning on or after January first, two thousand  
3 nineteen and before January first, two thousand twenty; .025 percent for  
4 taxable years beginning on or after January first, two thousand twenty  
5 and before January first, two thousand twenty-one; and zero percent for  
6 years beginning on or after January first, two thousand twenty-one. The  
7 rate of tax for a qualified New York manufacturer for tax years subse-  
8 quent to taxable years beginning on or after January first, two thousand  
9 fifteen and before January first, two thousand sixteen shall be .106  
10 percent for taxable years beginning on or after January first, two thou-  
11 sand sixteen and before January first, two thousand seventeen, .085  
12 percent for taxable years beginning on or after January first, two thou-  
13 sand seventeen and before January first, two thousand eighteen; .056  
14 percent for taxable years beginning on or after January first, two thou-  
15 sand eighteen and before January first, two thousand nineteen; .038

16 percent for taxable years beginning on or after January first, two thou-  
17 sand nineteen and before January first, thousand twenty; .019 percent  
18 for taxable years beginning on or after January first, two thousand  
19 twenty and before January first, two thousand twenty-one; and zero  
20 percent for years beginning on or after January first, two thousand  
21 twenty-one. In no event shall the amount prescribed by this paragraph  
22 exceed three hundred fifty thousand dollars for qualified New York  
23 manufacturers and for all other taxpayers [~~ten~~] five million dollars  
24 [~~for taxable years beginning on or after January first, two thousand~~  
25 ~~eight but before January first, two thousand eleven and one million~~  
26 ~~dollars for taxable years beginning on or after January first, two thou-~~  
27 ~~sand eleven~~].

28 (2) For purposes of subparagraph one of this paragraph, the term  
29 "manufacturer" shall mean a taxpayer which during the taxable year is  
30 principally engaged in the production of goods by manufacturing, proc-  
31 essing, assembling, refining, mining, extracting, farming, agriculture,  
32 horticulture, floriculture, viticulture or commercial fishing. Moreover,  
33 for purposes of computing the capital base in a combined report, the  
34 combined group shall be considered a "manufacturer" for purposes of this  
35 subparagraph only if the combined group during the taxable year is prin-  
36 cipally engaged in the activities set forth in this subparagraph, or any  
37 combination thereof. A taxpayer or a combined group shall be "principal-  
38 ly engaged" in activities described above if, during the taxable year,  
39 more than fifty percent of the gross receipts of the taxpayer or  
40 combined group, respectively, are derived from receipts from the sale of  
41 goods produced by such activities. In computing a combined group's gross  
42 receipts, intercorporate receipts shall be eliminated. A "qualified New  
43 York manufacturer" is a manufacturer that has property in New York that  
44 is described in [~~clause (A) of subparagraph (i) of paragraph (b) of~~]  
45 subdivision [~~twelve of this section~~] one of section 210-B of this arti-  
46 cle and either (i) the adjusted basis of that property for federal  
47 income tax purposes at the close of the taxable year is at least one  
48 million dollars or (ii) all of its real and personal property is located  
49 in New York. In addition, a "qualified New York manufacturer" means a  
50 taxpayer that is defined as a qualified emerging technology company  
51 under paragraph (c) of subdivision one of section thirty-one hundred  
52 two-e of the public authorities law regardless of the ten million dollar  
53 limitation expressed in subparagraph one of such paragraph. A taxpayer  
54 or, in the case of a combined report, a combined group, that does not  
55 satisfy the principally engaged test may be a qualified New York  
56 manufacturer if the taxpayer or the combined group employs during the

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1 taxable year at least two thousand five hundred employees in manufactur-  
2 ing in New York and the taxpayer or the combined group has property in  
3 the state used in manufacturing, the adjusted basis of which for federal  
4 income tax purposes at the close of the taxable year is at least one  
5 hundred million dollars.

6 [~~(3) For a qualified New York manufacturer, as defined in subparagraph~~  
7 ~~two of this paragraph, the rate at which the tax is computed in effect~~  
8 ~~for taxable years beginning on or after January first, two thousand~~  
9 ~~thirteen and before January first, two thousand fourteen shall be~~  
10 ~~reduced by nine and two-tenths percent for taxable years commencing on~~  
11 ~~or after January first, two thousand fourteen and before January first,~~  
12 ~~two thousand fifteen, twelve and three-tenths percent for taxable years~~  
13 ~~commencing on or after January first, two thousand fifteen and before~~  
14 ~~January first, two thousand sixteen, fifteen and four-tenths percent for~~  
15 ~~taxable years commencing on or after January first, two thousand sixteen~~  
16 ~~and before January first, two thousand eighteen, and twenty-five percent~~  
17 ~~for taxable years beginning on or after January first, two thousand~~  
18 ~~eighteen.~~

19 ~~(c) Minimum taxable income bases. (i) For taxable years beginning~~  
20 ~~after nineteen hundred eighty-six and before nineteen hundred eighty-~~

~~nine, the amount prescribed by this paragraph shall be computed at the rate of three and one-half percent of the taxpayer's pre-nineteen hundred ninety minimum taxable income base. For taxable years beginning in nineteen hundred eighty-nine, the amount prescribed by this paragraph shall be computed at the rate of five percent of the taxpayer's pre-nineteen hundred ninety minimum taxable income base. A "taxpayer's pre-nineteen hundred ninety minimum taxable income base" shall mean the portion of the taxpayer's entire net income allocated within the state as hereinafter provided, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section;~~

~~(ii) (A) For taxable years beginning on or after January first, two thousand seven, the amount prescribed by this paragraph shall be computed at the rate of one and one-half percent of the taxpayer's minimum taxable income base. The "taxpayer's minimum taxable income base" shall mean the portion of the taxpayer's minimum taxable income allocated within the state as hereinafter provided, subject to any modifications required by paragraphs (d) and (e) of subdivision three of this section.~~

~~(B) For taxable years beginning on or after January first, two thousand twelve and before January first, two thousand fifteen, the amount prescribed by this paragraph for an eligible qualified New York manufacturer shall be computed at the rate of seventy-five hundredths (.75) percent of the taxpayer's minimum taxable income base. For purposes of this clause, the term "eligible qualified New York manufacturer" shall have the same meaning as in subparagraph (vi) of paragraph (a) of this subdivision.~~

~~(iii) For a qualified New York manufacturer, as defined in subparagraph (vi) of paragraph (a) of this subdivision, the rate at which the tax is computed in effect for taxable years beginning on or after January first, two thousand thirteen and before January first, two thousand fourteen for qualified New York manufacturers shall be reduced by nine and two tenths percent for taxable years commencing on or after January first, two thousand fourteen and before January first, two thousand fifteen, twelve and three tenths percent for taxable years commencing on or after January first, two thousand fifteen and before January first, two thousand sixteen, fifteen and four tenths percent for taxable years~~

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~~commencing on or after January first, two thousand sixteen and before January first, two thousand eighteen, and twenty five percent for taxable years beginning on or after January first, two thousand eighteen.]~~

~~(d) Fixed dollar minimum. (1) The [amount prescribed by this paragraph shall be for a taxpayer which during the taxable year has:~~

~~(A) a gross payroll of six million two hundred fifty thousand dollars or more, one thousand five hundred dollars;~~

~~(B) a gross payroll of less than six million two hundred fifty thousand dollars but more than one million dollars, four hundred twenty-five dollars;~~

~~(C) a gross payroll of no more than one million dollars but more than five hundred thousand dollars, three hundred twenty-five dollars;~~

~~(D) a gross payroll of no more than five hundred thousand dollars but more than two hundred fifty thousand dollars, two hundred twenty-five dollars;~~

~~(E) a gross payroll of two hundred fifty thousand dollars or less (except as prescribed in clause (F) of this subparagraph), one hundred dollars;~~

~~(F) a gross payroll of one thousand dollars or less, with total receipts within and without this state of one thousand dollars or less, and the average value of the assets of which are one thousand dollars or less, eight hundred dollars.~~

~~(2) For purposes of this paragraph:~~

~~(A) gross payroll shall be the same as the total wages, salaries and other personal service compensation of all the taxpayer's employees,~~

26 ~~within and without this state, as defined in subparagraph three of para-~~  
27 ~~graph (a) of subdivision three of this section, except that general~~  
28 ~~executive officers shall not be excluded.~~

29 ~~(B) total receipts shall be the same as receipts within and without~~  
30 ~~this state as defined in subparagraph two of paragraph (a) of subdivi-~~  
31 ~~sion three of this section.~~

32 ~~(C) average value of the assets shall be the same as prescribed by~~  
33 ~~subdivision two of this section without reduction for liabilities.~~

34 ~~(3) If the taxable year is less than twelve months, the amount~~  
35 ~~prescribed by this paragraph shall be reduced by twenty-five percent if~~  
36 ~~the period for which the taxpayer is subject to tax is more than six~~  
37 ~~months but not more than nine months and by fifty percent if the period~~  
38 ~~for which the taxpayer is subject to tax is not more than six months.~~  
39 ~~Provided, however, that in determining the amount of gross payroll and~~  
40 ~~total receipts for purposes of subparagraph one of this paragraph, where~~  
41 ~~the taxable year is less than twelve months, the amount of each shall be~~  
42 ~~determined by dividing the amount of each with respect to the taxable~~  
43 ~~year by the number of months in such taxable year and multiplying the~~  
44 ~~result by twelve. If the taxable year is less than twelve months, the~~  
45 ~~amount of New York receipts for purposes of subparagraph four of this~~  
46 ~~paragraph is determined by dividing the amount of the receipts for the~~  
47 ~~taxable year by the number of months in the taxable year and multiplying~~  
48 ~~the result by twelve.~~

49 ~~(4) Notwithstanding subparagraphs one and two of this paragraph, for~~  
50 ~~taxable years beginning on or after January first, two thousand eight,~~  
51 ~~the] amount prescribed by this paragraph for New York S corporations~~  
52 ~~will be determined in accordance with the following table:~~

53 If New York receipts are:	The fixed dollar minimum tax is:
54 not more than \$100,000	\$ 25
55 more than \$100,000 but not over \$250,000	\$ 50
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1 more than \$250,000 but not over \$500,000	\$ 175
2 more than \$500,000 but not over \$1,000,000	\$ 300
3 more than \$1,000,000 but not over \$5,000,000	\$1,000
4 more than \$5,000,000 but not over \$25,000,000	\$3,000
5 Over \$25,000,000	\$4,500

6 ~~[Otherwise the amount prescribed by this paragraph will be determined in~~  
7 ~~accordance with the following table:]~~

8 Provided further, the amount prescribed by this paragraph for a quali-  
9 fied New York manufacturer, as defined in subparagraph (vi) of paragraph  
10 (a) of this subdivision, and a qualified emerging technology company  
11 under paragraph (c) of subdivision one of section thirty-one hundred  
12 two-e of the public authorities law regardless of the ten million dollar  
13 limitation expressed in subparagraph one of such paragraph (c) will be  
14 determined in accordance with the following tables:

15 For tax years beginning on or after January 1, 2014 and before January  
16 1, 2015:

17 <u>If New York receipts are:</u>	<u>The fixed dollar minimum tax is:</u>
18 <u>not more than \$100,000</u>	<u>\$ 23</u>
19 <u>more than \$100,000 but not over \$250,000</u>	<u>\$ 68</u>
20 <u>more than \$250,000 but not over \$500,000</u>	<u>\$ 159</u>
21 <u>more than \$500,000 but not over \$1,000,000</u>	<u>\$ 454</u>
22 <u>more than \$1,000,000 but not over \$5,000,000</u>	<u>\$1,362</u>
23 <u>more than \$5,000,000 but not over \$25,000,000</u>	<u>\$3,178</u>
24 <u>Over \$25,000,000</u>	<u>\$4,500</u>

25 For tax years beginning on or after January 1, 2015 and before January  
26 1, 2016:



27	<u>If New York receipts are:</u>	<u>The fixed dollar minimum tax is:</u>
28	<u>not more than \$100,000</u>	<u>\$ 22</u>
29	<u>more than \$100,000 but not over \$250,000</u>	<u>\$ 66</u>
30	<u>more than \$250,000 but not over \$500,000</u>	<u>\$ 153</u>
31	<u>more than \$500,000 but not over \$1,000,000</u>	<u>\$ 439</u>
32	<u>more than \$1,000,000 but not over \$5,000,000</u>	<u>\$1,316</u>
33	<u>more than \$5,000,000 but not over \$25,000,000</u>	<u>\$3,070</u>
34	<u>Over \$25,000,000</u>	<u>\$4,385</u>

35 For tax years beginning on or after January 1, 2016 and before January  
36 1, 2018:

37	<u>If New York receipts are:</u>	<u>The fixed dollar minimum tax is:</u>
38	<u>not more than \$100,000</u>	<u>\$ 21</u>
39	<u>more than \$100,000 but not over \$250,000</u>	<u>\$ 63</u>
40	<u>more than \$250,000 but not over \$500,000</u>	<u>\$ 148</u>
41	<u>more than \$500,000 but not over \$1,000,000</u>	<u>\$ 423</u>
42	<u>more than \$1,000,000 but not over \$5,000,000</u>	<u>\$1,269</u>
43	<u>more than \$5,000,000 but not over \$25,000,000</u>	<u>\$2,961</u>
44	<u>Over \$25,000,000</u>	<u>\$4,230</u>

45 For tax years beginning on or after January 1, 2018:

46	<u>If New York receipts are:</u>	<u>The fixed dollar minimum tax is:</u>
47	<u>not more than \$100,000</u>	<u>\$ 19</u>
48	<u>more than \$100,000 but not over \$250,000</u>	<u>\$ 56</u>

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1	<u>more than \$250,000 but not over \$500,000</u>	<u>\$ 131</u>
2	<u>more than \$500,000 but not over \$1,000,000</u>	<u>\$ 375</u>
3	<u>more than \$1,000,000 but not over \$5,000,000</u>	<u>\$1,125</u>
4	<u>more than \$5,000,000 but not over \$25,000,000</u>	<u>\$2,625</u>
5	<u>Over \$25,000,000</u>	<u>\$3,750</u>

6 Otherwise the amount prescribed by this paragraph will be determined in  
7 accordance with the following table:

8	<u>If New York receipts are:</u>	<u>The fixed dollar minimum tax is:</u>
9	<u>not more than \$100,000</u>	<u>\$ 25</u>
10	<u>more than \$100,000 but not over \$250,000</u>	<u>\$ 75</u>
11	<u>more than \$250,000 but not over \$500,000</u>	<u>\$ 175</u>
12	<u>more than \$500,000 but not over \$1,000,000</u>	<u>\$ 500</u>
13	<u>more than \$1,000,000 but not over \$5,000,000</u>	<u>\$1,500</u>
14	<u>more than \$5,000,000 but not over \$25,000,000</u>	<u>\$3,500</u>
15	<u>[Over] more than \$25,000,000</u>	
16	<u>but not over \$50,000,000</u>	<u>\$5,000</u>
17	<u>more than \$50,000,000 but not over \$100,000,000</u>	<u>\$10,000</u>
18	<u>more than \$100,000,000 but not over \$250,000,000</u>	<u>\$20,000</u>
19	<u>more than \$250,000,000 but not over \$500,000,000</u>	<u>\$50,000</u>
20	<u>more than \$500,000,000 but not over \$1,000,000,000</u>	<u>\$100,000</u>
21	<u>Over \$1,000,000,000</u>	<u>\$200,000</u>

22 For purposes of this paragraph, New York receipts are the receipts  
23 ~~[computed in accordance with subparagraph two of paragraph (a) of subdi-~~  
24 ~~vision three of this]~~ included in the numerator of the apportionment  
25 factor determined under section two hundred ten-A for the taxable year.

26 (2) If the taxable year is less than twelve months, the amount of New  
27 York receipts is determined by dividing the amount of the receipts for  
28 the taxable year by the number of months in the taxable year and multi-  
29 plying the result by twelve. In the case of a termination year of a New  
30 York S corporation, the sum of the tax computed under this paragraph for  
31 the S short year and for the C short year shall not be less than the  
32 amount computed under this paragraph as if the corporation were a New



33 York C corporation for the entire taxable year.

34 [~~(5) For taxable years beginning on or after January first, two thou-~~  
35 ~~sand twelve and before January first, two thousand fifteen, the amounts~~  
36 ~~prescribed in subparagraphs one and four of this paragraph as the fixed~~  
37 ~~dollar minimum tax for an eligible qualified New York manufacturer shall~~  
38 ~~be one-half of the amounts stated in those subparagraphs. For purposes~~  
39 ~~of this subparagraph, the term "eligible qualified New York manufactur-~~  
40 ~~er" shall have the same meaning as in subparagraph (vi) of paragraph (a)~~  
41 ~~of this subdivision.~~

42 ~~(6) For a qualified New York manufacturer, as defined in subparagraph~~  
43 ~~(vi) of paragraph (a) of this subdivision, the amounts prescribed in~~  
44 ~~subparagraphs one and four of this paragraph in effect for taxable years~~  
45 ~~beginning on or after January first, two thousand thirteen and before~~  
46 ~~January first, two thousand fourteen for qualified New York manufactur-~~  
47 ~~ers shall be reduced by nine and two-tenths percent for taxable years~~  
48 ~~commencing on or after January first, two thousand fourteen and before~~  
49 ~~January first, two thousand fifteen, twelve and three-tenths percent for~~  
50 ~~taxable years commencing on or after January first, two thousand fifteen~~  
51 ~~and before January first, two thousand sixteen, fifteen and four-tenths~~  
52 ~~percent for taxable years commencing on or after January first, two~~  
53 ~~thousand sixteen and before January first, two thousand eighteen, and~~

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1 ~~twenty-five percent for taxable years beginning on or after January~~  
2 ~~first, two thousand eighteen.~~

3 ~~(e) Subsidiary capital base. (1) The amount prescribed by this para-~~  
4 ~~graph shall be computed at the rate of nine-tenths of a mill for each~~  
5 ~~dollar of the portion of the taxpayer's subsidiary capital allocated~~  
6 ~~within the state as hereinafter provided.~~

7 ~~(2) For purposes of this paragraph, the amount of such subsidiary~~  
8 ~~capital, prior to allocation, shall be reduced by the applicable~~  
9 ~~percentage of the taxpayer's (i) investments in the stock of, and any~~  
10 ~~indebtedness from, subsidiaries subject to tax under section one hundred~~  
11 ~~eighty-six of this chapter (but only to the extent such indebtedness is~~  
12 ~~included in subsidiary capital), and (ii) investments in the stock of,~~  
13 ~~and any indebtedness from, subsidiaries subject to tax under article~~  
14 ~~thirty-two or thirty-three of this chapter (but only to the extent such~~  
15 ~~indebtedness is included in subsidiary capital). For purposes of clause~~  
16 ~~(i) of this subparagraph, the applicable percentage shall be thirty~~  
17 ~~percent for taxable years beginning in two thousand, and one hundred~~  
18 ~~percent for taxable years beginning after two thousand. For purposes of~~  
19 ~~clause (ii) of this subparagraph, the applicable percentage shall be one~~  
20 ~~hundred percent for taxable years beginning after nineteen hundred nine-~~  
21 ~~ty-nine.]~~

22 (f) For purposes of this section, the term "small business taxpayer"  
23 shall mean a taxpayer (i) which has an entire net income of not more  
24 than three hundred ninety thousand dollars for the taxable year; (ii)  
25 [~~which constitutes a small business as defined in section 1244(c)(3) of~~  
26 ~~internal revenue code (without regard to the second sentence of subpara-~~  
27 ~~graph (A) thereof) as of the last day of the taxable year] the aggregate  
28 amount of money and other property received by the corporation for  
29 stock, as a contribution to capital, and as paid-in surplus, does not  
30 exceed one million dollars; [and] (iii) which is not part of an affil-  
31 iated group, as defined in section 1504 of the internal revenue code,  
32 unless such group, if it had filed a report under this article on a  
33 combined basis, would have itself qualified as a "small business taxpay-  
34 er" pursuant to this subdivision; and (iv) which has an average number  
35 of individuals, excluding general executive officers, employed full-time  
36 in the state during the taxable year of one hundred or fewer. If the  
37 taxable period to which subparagraph (i) of this paragraph applies is  
38 less than twelve months, entire net income under such subparagraph shall  
39 be placed on an annual basis by multiplying the entire net income by  
40 twelve and dividing the result by the number of months in the period.~~

41 For purposes of subparagraph (ii) of this paragraph, the amount taken  
42 into account with respect to any property other than money shall be the  
43 amount equal to the adjusted basis to the corporation of such property  
44 for determining gain, reduced by any liability to which the property was  
45 subject or which was assumed by the corporation. The determination under  
46 the preceding sentence shall be made as of the time the property was  
47 received by the corporation. For purposes of subparagraph (iii) of this  
48 section, "average number of individuals, excluding general executive  
49 officers, employed full-time" shall be computed by ascertaining the  
50 number of such individuals employed by the taxpayer on the thirty-first  
51 day of March, the thirtieth day of June, the thirtieth day of September  
52 and the thirty-first day of December during each taxable year or other  
53 applicable period, by adding together the number of such individuals  
54 ascertained on each of such dates and dividing the sum so obtained by  
55 the number of such dates occurring within such taxable year or other  
56 applicable period. An individual employed full-time means an employee in  
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1 a job consisting of at least thirty-five hours per week, or two or more  
2 employees who are in jobs that together constitute the equivalent of a  
3 job at least thirty-five hours per week (full-time equivalent). Full-  
4 time equivalent employees in the state includes all employees regularly  
5 connected with or working out of an office or place of business of the  
6 taxpayer within the state.

7 ~~[(g) New York S corporations. (1) General. The amount prescribed by~~  
8 ~~this paragraph shall be, in the case of each New York S corporation, (i)~~  
9 ~~the higher of the amounts prescribed in paragraphs (a) and (d) of this~~  
10 ~~subdivision (other than the amount prescribed in the final clause of~~  
11 ~~subparagraph one of that paragraph (d)) (ii) reduced by the article~~  
12 ~~twenty-two tax equivalent; provided, however, that the amount thus~~  
13 ~~determined shall not be less than the lowest of the amounts prescribed~~  
14 ~~in subparagraph one of that paragraph (d) (applying the provisions of~~  
15 ~~subparagraph three of that paragraph as necessary). Provided, however,~~  
16 ~~notwithstanding any provision of this paragraph, in taxable years begin-~~  
17 ~~ning in two thousand three and before two thousand eight, the amount~~  
18 ~~prescribed by this paragraph shall be the amount prescribed in subpara-~~  
19 ~~graph one of that paragraph (d) (applying the provisions of subparagraph~~  
20 ~~three of that paragraph as necessary) and applying the calculation of~~  
21 ~~that amount in the case of a termination year as set forth in subpara-~~  
22 ~~graph four of this paragraph as necessary. In taxable years beginning in~~  
23 ~~two thousand eight and thereafter, the amount prescribed by this para-~~  
24 ~~graph is the amount prescribed in subparagraph four of that paragraph~~  
25 ~~(d) (applying the provisions of subparagraph three of that paragraph as~~  
26 ~~necessary) and applying the calculation of that amount in the case of a~~  
27 ~~termination year as set forth in subparagraph four of this paragraph as~~  
28 ~~necessary.~~

29 ~~(2) Article twenty-two tax equivalent. For taxable years beginning~~  
30 ~~before July first, nineteen hundred ninety-nine, the article twenty-two~~  
31 ~~tax equivalent is the amount computed under paragraph (a) of this subdivi-~~  
32 ~~vision by substituting for the rate therein the rate of 7.875 percent.~~  
33 ~~For taxable years beginning after June thirtieth, nineteen hundred nine-~~  
34 ~~ty-nine and before July first, two thousand, the article twenty-two tax~~  
35 ~~equivalent is the amount computed under paragraph (a) of this subdivi-~~  
36 ~~sion by substituting for the rate therein the rate of 7.525 percent. For~~  
37 ~~taxable years beginning after June thirtieth, two thousand and before~~  
38 ~~July first, two thousand one, the article twenty-two tax equivalent is~~  
39 ~~the amount computed under paragraph (a) of this subdivision by substi-~~  
40 ~~tuting for the rate therein the rate of 7.175 percent. For taxable years~~  
41 ~~beginning after June thirtieth, two thousand one and before July first,~~  
42 ~~two thousand three, the article twenty-two tax equivalent is the amount~~  
43 ~~computed under paragraph (a) of this subdivision by substituting for the~~  
44 ~~rate therein the rate of 6.85 percent. For taxable years beginning after~~  
45 ~~June thirtieth, two thousand three, the article twenty-two tax equiv-~~

46 ~~alent is the amount computed under paragraph (a) of this subdivision by~~  
47 ~~substituting for the rate therein the rate of 7.1425 percent.~~

48 ~~(3) Small business taxpayers. Notwithstanding the provisions of~~  
49 ~~subparagraphs one and two of this paragraph, in the case of a New York S~~  
50 ~~corporation which is a small business taxpayer, as defined in paragraph~~  
51 ~~(f) of this subdivision, the following provisions shall apply:~~

52 ~~(A) For taxable years beginning before July first, nineteen hundred~~  
53 ~~ninety-nine, the article twenty-two tax equivalent is the amount~~  
54 ~~computed under paragraph (a) of this subdivision by substituting for the~~  
55 ~~rate therein the rate of 7.875 percent.~~

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1 ~~(B) For taxable years beginning after June thirtieth, nineteen hundred~~  
2 ~~ninety-nine and before July first, two thousand three, the amount~~  
3 ~~computed under paragraph (a) of this subdivision, as referred to in~~  
4 ~~subparagraph one of this paragraph, shall be computed by substituting~~  
5 ~~for the rate therein the rate of 7.5 percent, and the article twenty-two~~  
6 ~~tax equivalent under paragraph (a) of this subdivision shall be computed~~  
7 ~~as follows:~~

8 ~~(i) if the entire net income base is not more than two hundred thou-~~  
9 ~~sand dollars, the article twenty-two tax equivalent is the amount~~  
10 ~~computed under paragraph (a) of this subdivision by substituting for the~~  
11 ~~rate therein the rate of 7.45 percent;~~

12 ~~(ii) if the entire net income base is more than two hundred thousand~~  
13 ~~dollars but not over two hundred ninety thousand dollars, the article~~  
14 ~~twenty-two tax equivalent shall be computed as the sum of (I) fourteen~~  
15 ~~thousand nine hundred dollars, (II) six and eighty-five hundredths~~  
16 ~~percent of the first fifty thousand dollars in excess of the entire net~~  
17 ~~income base over two hundred thousand dollars, and (III) three and~~  
18 ~~eighty-five hundredths percent of the excess, if any, of the entire net~~  
19 ~~income base over two hundred fifty thousand dollars.~~

20 ~~(C) For taxable years beginning after June thirtieth, two thousand~~  
21 ~~three, the amount computed under paragraph (a) of this subdivision, as~~  
22 ~~referred to in subparagraph one of this paragraph, shall be computed by~~  
23 ~~substituting for the rate therein the rate of 7.5 percent, and the arti-~~  
24 ~~cle twenty-two tax equivalent under paragraph (a) of this subdivision~~  
25 ~~shall be computed as follows:~~

26 ~~(i) if the entire net income base is not more than two hundred thou-~~  
27 ~~sand dollars, the article twenty-two tax equivalent is the amount~~  
28 ~~computed under paragraph (a) of this subdivision by substituting for the~~  
29 ~~rate therein the rate of 7.4725 percent;~~

30 ~~(ii) if the entire net income base is more than two hundred thousand~~  
31 ~~dollars but not over two hundred ninety thousand dollars, the article~~  
32 ~~twenty-two tax equivalent shall be computed as the sum of (I) fourteen~~  
33 ~~thousand nine hundred forty-five dollars, (II) 7.1425 percent of the~~  
34 ~~first fifty thousand dollars in excess of the entire net income base~~  
35 ~~over two hundred thousand dollars, and (III) 5.4925 percent of the~~  
36 ~~excess, if any, of the entire net income base over two hundred fifty~~  
37 ~~thousand dollars.~~

38 ~~(4) Termination year. In the case of a termination year, the tax for~~  
39 ~~the S short year shall be computed under this paragraph without regard~~  
40 ~~to the fixed dollar minimum tax prescribed in paragraph (d) of this~~  
41 ~~subdivision, and the tax for the C short year shall be computed under~~  
42 ~~the opening paragraph of this subdivision without regard to the fixed~~  
43 ~~dollar minimum tax prescribed under such paragraph (d), but in no event~~  
44 ~~shall the sum of the tax for the S short year and the tax for the C~~  
45 ~~short year be less than the fixed dollar minimum tax under paragraph (d)~~  
46 ~~of this subdivision computed as if the corporation were a New York C~~  
47 ~~corporation for the entire taxable year.]~~

48 § 13. Subdivision 1-c of section 210 of the tax law, as amended by  
49 chapter 1043 of the laws of 1981, the opening paragraph and paragraph  
50 (a) as amended by chapter 817 of the laws of 1987, and paragraph (b) as  
51 amended by section 12 of part Y of chapter 63 of the laws of 2000, is

52 amended to read as follows:

53 1-c. The computations specified in paragraph (b) of subdivision one of  
54 this section shall not apply to the first two taxable years of a taxpay-  
55 er which, for one or both such years, is a small business [~~concern. A~~  
56 ~~small business concern~~]

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1 ~~(a) is a taxpayer which is a small business corporation as defined in~~  
2 ~~paragraph three of subsection (c) of section twelve hundred forty-four~~  
3 ~~of the internal revenue code (without regard to the second sentence of~~  
4 ~~subparagraph (A) thereof) as of the last day of the taxable year,~~

5 ~~(b) is not a corporation over fifty percent of the number of shares of~~  
6 ~~stock of which entitling the holders thereof to vote for the election of~~  
7 ~~directors or trustees is owned by a taxpayer which (1) is subject to tax~~  
8 ~~under this article; section one hundred eighty-three, one hundred eight-~~  
9 ~~y-four or one hundred eighty-five of article nine; article thirty-two or~~  
10 ~~thirty-three of this chapter, and (2) does not qualify as a small busi-~~  
11 ~~ness corporation as defined in paragraph three of subsection (c) of~~  
12 ~~section twelve hundred forty-four of the internal revenue code (without~~  
13 ~~regard to the second sentence of subparagraph (A) thereof) as of the~~  
14 ~~last day of its taxable year ending within or with the taxable year of~~  
15 ~~the taxpayer,~~

16 ~~(c) is not a corporation which is substantially similar in operation~~  
17 ~~and in ownership to a business entity (or entities) taxable, or previ-~~  
18 ~~ously taxable, under this article; section one hundred eighty-three, one~~  
19 ~~hundred eighty-four, one hundred eighty-five or one hundred eighty-six~~  
20 ~~of article nine; article thirty-two or thirty-three of this chapter;~~  
21 ~~article twenty-three of this chapter or which would have been subject to~~  
22 ~~tax under such article twenty-three (as such article was in effect on~~  
23 ~~January first, nineteen hundred eighty) or the income (or losses) of~~  
24 ~~which is (or was) includable under article twenty-two of this chapter,~~  
25 ~~and~~

26 ~~(d) at least ninety percent of the assets of such corporation (valued~~  
27 ~~at original cost) were located and employed in this state during the~~  
28 ~~taxable year and eighty percent of the employees of such corporation (as~~  
29 ~~ascertained within the meaning and intent of subparagraph three of para-~~  
30 ~~graph (a) of subdivision three of this section) were principally~~  
31 ~~employed in this state during the taxable year] taxpayer as defined in~~  
32 ~~paragraph (f) of subdivision one of this section.~~

33 § 14. Subdivision 2 of section 210 of the tax law, as amended by chap-  
34 ter 760 of the laws of 1992, is amended to read as follows:

35 2. The amount of [~~subsidiary capital,~~] investment capital and business  
36 capital shall each be determined by taking the average value of the  
37 assets included therein (less liabilities deductible therefrom pursuant  
38 to the provisions of subdivisions [~~four,~~] five and seven of section two  
39 hundred eight), and, if the period covered by the report is other than a  
40 period of twelve calendar months, by multiplying such value by the  
41 number of calendar months or major parts thereof included in such peri-  
42 od, and dividing the product thus obtained by twelve. For purposes of  
43 this subdivision, real property and marketable securities shall be  
44 valued at fair market value and the value of personal property other  
45 than marketable securities shall be the value thereof shown on the books  
46 and records of the taxpayer in accordance with generally accepted  
47 accounting principles.

48 § 15. Subdivisions 3, 3-a, 4, 5, 6, 7, 8, 9, 10, 11, 12, 12-A, 12-B,  
49 12-C, 12-D, 12-E, 12-F, 12-G, 13, 14, 15, 16, 17, 18, 19, 20, 21, 21-a,  
50 22, 23, 23-a, 24, 25, 25-a, 26, 26-a, 27, 28, 30, 31, 32, 33, 34, 35,  
51 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47 of section 210 of the  
52 tax law are REPEALED.

53 § 15-a. Section 210 of the tax law is amended by adding a new subdivi-  
54 sion 3 to read as follows:

55 3. A corporation that is a partner in a partnership shall compute tax  
56 under this article using the aggregate method as defined in the regu-

1 lations of the commissioner, unless another method for computing such  
 2 tax is required or allowed by such regulations. Under the aggregate  
 3 method, a corporation that is a partner in a partnership is viewed as  
 4 having an undivided interest in the partnership's assets, liabilities,  
 5 and items of receipts, income, gain, loss and deduction. Under the  
 6 aggregate method, the corporation that is a partner in a partnership is  
 7 treated as participating in the partnership's transactions and activ-  
 8 ities.

9 § 16. The tax law is amended by adding a new section 210-A to read as  
 10 follows:

11 § 210-A. Apportionment. 1. General. Business income and capital shall  
 12 be apportioned to the state by the apportionment factor determined  
 13 pursuant to this section. The apportionment factor is a fraction, deter-  
 14 mined by including only those receipts, net income, net gains, and other  
 15 items described in this section that are included in the computation of  
 16 the taxpayer's business income for the taxable year. The numerator of  
 17 the apportionment fraction shall be equal to the sum of all the amounts  
 18 required to be included in the numerator pursuant to the provisions of  
 19 this section and the denominator of the apportionment fraction shall be  
 20 equal to the sum of all the amounts required to be included in the  
 21 denominator pursuant to the provisions of this section.

22 2. Sales of tangible personal property, electricity, and real proper-  
 23 ty. (a) Receipts from sales of tangible personal property where ship-  
 24 ments are made to points within the state or the destination of the  
 25 property is a point in the state shall be included in the numerator of  
 26 the apportionment fraction. Receipts from sales of tangible personal  
 27 property where shipments are made to points within and without the state  
 28 or the destination is within and without the state shall be included in  
 29 the denominator of the apportionment fraction.

30 (b) Receipts from sales of electricity delivered to points within the  
 31 state shall be included in the numerator of the apportionment fraction.  
 32 Receipts from sales of electricity delivered to points within and with-  
 33 out the state shall be included in the denominator of the apportionment  
 34 fraction.

35 (c) Receipts from sales of tangible personal property and electricity  
 36 that are traded as commodities as described in section 475 of the inter-  
 37 nal revenue code are included in the apportionment fraction in accord-  
 38 ance with clause (I) of subparagraph two of paragraph (a) of subdivision  
 39 five of this section.

40 (d) Net gains (not less than zero) from the sales of real property  
 41 located within the state shall be included in the numerator of the  
 42 apportionment fraction. Net gains (not less than zero) from the sales of  
 43 real property located within and without the state shall be included in  
 44 the denominator of the apportionment fraction.

45 3. Rentals and royalties. (a) Receipts from rentals of real and tangi-  
 46 ble personal property located within the state are included in the  
 47 numerator of the apportionment fraction. Receipts from rentals of real  
 48 and tangible personal property located within and without the state  
 49 shall be included in the denominator of the apportionment fraction.

50 (b) Receipts of royalties from the use of patents, copyrights, trade-  
 51 marks, and similar intangible personal property within the state are  
 52 included in the numerator of the apportionment fraction. Receipts of  
 53 royalties from the use of patents, copyrights, trademarks and similar  
 54 intangibles within and without the state are included in the denominator  
 55 of the apportionment fraction. A patent, copyright, trademark or similar

1 intangible property is used in the state to the extent that the activ-  
 2 ities thereunder are carried on in the state.

3 (c) Receipts from the sales of rights for closed-circuit and cable  
 4 television transmissions of an event (other than events occurring on a

5 regularly scheduled basis) taking place within the state as a result of  
6 the rendition of services by employees of the corporation, as athletes,  
7 entertainers or performing artists are included in the numerator of the  
8 apportionment fraction to the extent that such receipts are attributable  
9 to such transmissions received or exhibited within the state. Receipts  
10 from all sales of rights for closed-circuit and cable television trans-  
11 missions of an event are included in the denominator of the apportion-  
12 ment fraction.

13 4. Digital products. (a) For purposes of determining the apportionment  
14 fraction under this section, the term "digital product" means any prop-  
15 erty or service, or combination thereof, of whatever nature delivered to  
16 the purchaser through the use of wire, cable, fiber-optic, laser, micro-  
17 wave, radio wave, satellite or similar successor media, or any combina-  
18 tion thereof. Digital product includes, but is not limited to, an audio  
19 work, audiovisual work, visual work, book or literary work, graphic  
20 work, game, information or entertainment service, storage of digital  
21 products and computer software by whatever means delivered. The term  
22 "delivered to" includes furnished or provided to or accessed by. A  
23 digital product does not include legal, medical, accounting, architec-  
24 tural, research, analytical, engineering or consulting services provided  
25 by the taxpayer.

26 (b) Receipts from the sale of, licence to use, or granting of remote  
27 access to digital products within the state, determined according to the  
28 hierarchy of methods set forth in subparagraphs one through four of  
29 paragraph (c) of this subdivision, shall be included in the numerator of  
30 the apportionment fraction. Receipts from the sale of, license to use,  
31 or granting of remote access to digital products within and without the  
32 state shall be included in the denominator of the apportionment frac-  
33 tion. The taxpayer must exercise due diligence under each method  
34 described in paragraph (c) of this subdivision before rejecting it and  
35 proceeding to the next method in the hierarchy, and must base its deter-  
36 mination on information known to the taxpayer or information that would  
37 be known to the taxpayer upon reasonable inquiry. If the receipt for a  
38 digital product is comprised of a combination of property and services,  
39 it cannot be divided into separate components and is considered to be  
40 one receipt regardless of whether it is separately stated for billing  
41 purposes. The entire receipt must be allocated by this hierarchy.

42 (c) Hierarchy of sourcing methods. (1) The customer's primary use  
43 location of the digital product;

44 (2) The location where the digital product is received by the custom-  
45 er, or is received by a person designated for receipt by the customer;

46 (3) The apportionment fraction determined pursuant to this subdivision  
47 for the preceding taxable year for such digital product; or

48 (4) The apportionment fraction in the current taxable year for those  
49 digital products that can be sourced using the hierarchy of sourcing  
50 methods in subparagraphs one and two of this paragraph.

51 5. Financial transactions. (a) Financial instruments. A financial  
52 instrument is a "qualified financial instrument" if it is marked to  
53 market under section 475 or section 1256 of the internal revenue code,  
54 provided that loans secured by real property shall not be qualified  
55 financial instruments. A financial instrument is a "nonqualified finan-  
56 cial instrument" if it is not a qualified financial instrument.

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1 (1) Fixed percentage method for qualified financial instruments. In  
2 determining the inclusion of receipts and net gains from qualified  
3 financial instruments in the apportionment fraction, taxpayers may elect  
4 to use the fixed percentage method described in this subparagraph for  
5 qualified financial instruments. The election is irrevocable, applies to  
6 all qualified financial instruments, and must be made on an annual basis  
7 on the taxpayer's original, timely filed return. If the taxpayer elects  
8 the fixed percentage method, then all income, gain or loss, from quali-  
9 fied financial instruments constitutes business income, gain or loss. If

10 the taxpayer does not elect to use the fixed percentage method, then  
11 receipts and net gains are included in the apportionment fraction in  
12 accordance with the customer sourcing method described in subparagraph  
13 two of this paragraph. Under the fixed percentage method, eight percent  
14 of all net income (not less than zero) from qualified financial instru-  
15 ments is included in the numerator of the apportionment fraction. All  
16 net income (not less than zero) from qualified financial instruments is  
17 included in the denominator of the apportionment fraction.

18 (2) Customer sourcing method. Receipts and net gains from qualified  
19 financial instruments, in cases where the taxpayer did not elect to use  
20 the fixed percentage method described in subparagraph one of this para-  
21 graph, and from nonqualified financial instruments are included in the  
22 apportionment fraction in accordance with this subparagraph. For  
23 purposes of this paragraph, an individual is deemed to be located in the  
24 state if his or her billing address is in the state. A business entity  
25 is deemed to be located in the state if its commercial domicile is  
26 located in the state.

27 (A) Loans. (i) Receipts constituting interest from loans secured by  
28 real property located within the state shall be included in the numera-  
29 tor of the apportionment fraction. Receipts constituting interest from  
30 loans secured by real property located within and without the state  
31 shall be included in the denominator of the apportionment fraction.

32 (ii) Receipts constituting interest from loans not secured by real  
33 property shall be included in the numerator of the apportionment frac-  
34 tion if the borrower is located in the state. Receipts constituting  
35 interest from loans not secured by real property, whether the borrower  
36 is located within or without the state, shall be included in the denomi-  
37 nator of the apportionment fraction.

38 (iii) Net gains (not less than zero) from sales of loans secured by  
39 real property are included in the numerator of the apportionment frac-  
40 tion as provided in this subclause. The amount of net gains from the  
41 sale of loans secured by real property included in the numerator of the  
42 apportionment fraction is determined by multiplying the net gains by a  
43 fraction the numerator of which is the amount of gross proceeds from  
44 sales of loans secured by real property located within the state and the  
45 denominator of which is the gross proceeds from sales of loans secured  
46 by real property within and without the state. Gross proceeds shall be  
47 determined after the deduction of any cost incurred to acquire the loans  
48 but shall not be less than zero. Net gains (not less than zero) from  
49 sales of loans secured by real property within and without the state are  
50 included in the denominator of the apportionment fraction.

51 (iv) Net gains (not less than zero) from sales of loans not secured by  
52 real property are included in the numerator of the apportionment frac-  
53 tion as provided in this subclause. The amount of net gains from the  
54 sale of loans not secured by real property included in the numerator of  
55 the apportionment fraction is determined by multiplying the net gains by  
56 a fraction, the numerator of which is the amount of gross proceeds from

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1 sales of loans not secured by real property to purchasers located within  
2 the state and the denominator of which is the amount of gross receipts  
3 from sales of loans not secured by real property to purchasers located  
4 within and without the state. Gross proceeds shall be determined after  
5 the deduction of any cost incurred to acquire the loans but shall not be  
6 less than zero. Net gains (not less than zero) from sales of loans not  
7 secured by real property are included in the denominator of the appor-  
8 tionment fraction.

9 (B) Federal, state, and municipal debt. Receipts constituting interest  
10 and net gains from sales of debt instruments issued by the United  
11 States, any state, or political subdivision of a state shall not be  
12 included in the numerator of the apportionment fraction. Receipts  
13 constituting interest and net gains (not less than zero) from sales of  
14 debt instruments issued by the United States and the state of New York



15 or its political subdivisions shall be included in the denominator of  
16 the apportionment fraction. Fifty percent of the receipts constituting  
17 interest and net gains (not less than zero) from sales of debt instru-  
18 ments issued by other states or their political subdivisions shall be  
19 included in the denominator of the apportionment fraction.

20 (C) Asset backed securities and other government agency debt. Eight  
21 percent of the interest income from asset backed securities or other  
22 securities issued by government agencies, including but not limited to  
23 securities issued by the Government National Mortgage Association  
24 (GNMA), the Federal National Mortgage Association (FNMA), the Federal  
25 Home Loan Mortgage Corporation (FHLMC), or the Small Business Adminis-  
26 tration, or asset backed securities issued by other entities shall be  
27 included in the numerator of the apportionment fraction. Eight percent  
28 of the net gains (not less than zero) from (i) sales of asset backed  
29 securities or other securities issued by government agencies, including  
30 but not limited to securities issued by GNMA, FNMA, or FHLMC, the Small  
31 Business Administration, or (ii) sales of other asset backed securities  
32 that are sold through a registered securities broker or dealer or  
33 through a licensed exchange, shall be included in the numerator of the  
34 apportionment fraction. The amount of net gains (not less than zero)  
35 from sales of other asset backed securities not referenced in subclause  
36 (i) or (ii) of this clause included in the numerator of the apportion-  
37 ment fraction is determined by multiplying such net gains by a fraction,  
38 the numerator of which is the amount of gross proceeds from such sales  
39 to purchasers located in the state and the denominator of which is the  
40 amount of gross proceeds from such sales to purchasers located within  
41 and without the state. Receipts constituting interest from asset backed  
42 securities and other securities referenced in this clause and net gains  
43 (not less than zero) from sales of asset backed securities and other  
44 securities referenced in this clause are included in the denominator of  
45 the apportionment fraction. Gross proceeds shall be determined after the  
46 deduction of any cost to acquire the securities but shall not be less  
47 than zero.

48 (D) Corporate bonds. Receipts constituting interest from corporate  
49 bonds are included in the numerator of the apportionment fraction if the  
50 commercial domicile of the issuing corporation is in the state. Eight  
51 percent of the net gains (not less than zero) from sales of corporate  
52 bonds sold through a registered securities broker or dealer or through a  
53 licensed exchange is included in the numerator of the apportionment  
54 fraction. The amount of net gains (not less than zero) from other sales  
55 of corporate bonds included in the numerator of the apportionment frac-  
56 tion is determined by multiplying such net gains by a fraction, the

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1 numerator of which is the amount of gross proceeds from such sales to  
2 purchasers located in the state and the denominator of which is the  
3 amount of gross proceeds from sales to purchasers located within and  
4 without the state. Receipts constituting interest from corporate bonds,  
5 whether the issuing corporation's commercial domicile is within or with-  
6 out the state, and net gains (not less than zero) from sales of corpo-  
7 rate bonds to purchasers within and without the state are included in  
8 the denominator of the apportionment fraction. Gross proceeds shall be  
9 determined after the deduction of any cost to acquire the bonds but  
10 shall not be less than zero.

11 (E) Reverse repurchase agreements and securities borrowing agreements.  
12 Eight percent of net interest income (not less than zero) from reverse  
13 repurchase agreements and securities borrowing agreements shall be  
14 included in the numerator of the apportionment fraction. Net interest  
15 income (not less than zero) from reverse repurchase agreements and secu-  
16 rities borrowing agreements is included in the denominator of the appor-  
17 tionment fraction. Net interest income from reverse repurchase agree-  
18 ments and securities borrowing agreements is determined for purposes of  
19 this subdivision after the deduction of the interest expense from the



20 taxpayer's repurchase agreements and securities lending agreements but  
21 cannot be less than zero. For this calculation, the amount of such  
22 interest expense is the interest expense associated with the sum of the  
23 value of the taxpayer's repurchase agreements where it is the  
24 seller/borrower plus the value of the taxpayer's securities lending  
25 agreements where it is the securities lender, provided such sum is  
26 limited to the sum of the value of the taxpayer's reverse repurchase  
27 agreements where it is the purchaser/lender plus the value of the  
28 taxpayer's securities lending agreements where it is the securities  
29 borrower.

30 (F) Federal funds. Eight percent of the net interest (not less than  
31 zero) from federal funds is included in the numerator of the apportion-  
32 ment fraction. The net interest (not less than zero) from federal funds  
33 is included in the denominator of the apportionment fraction. Net inter-  
34 est from federal funds is determined after deduction of interest expense  
35 from federal funds.

36 (G) Dividends and net gains from sales of stock or partnership inter-  
37 ests. Dividends from stock, net gains (not less than zero) from sales of  
38 stock and net gains (not less than zero) from the sale of partnership  
39 interests are not included in either the numerator or denominator of the  
40 apportionment fraction unless the commissioner determines pursuant to  
41 subdivision eleven of this section that inclusion of such dividends and  
42 net gains (not less than zero) is necessary to properly reflect the  
43 business income or capital of the taxpayer.

44 (H) Other financial instruments. (i) Receipts constituting interest  
45 from other financial instruments shall be included in the numerator of  
46 the apportionment fraction if the payor is located in the state.  
47 Receipts constituting interest from other financial instruments, whether  
48 the payor is within or without the state, are included in the denomina-  
49 tor of the apportionment fraction.

50 (ii) Net gains (not less than zero) from sales of other financial  
51 instruments and other income (not less than zero) from other financial  
52 instruments where the purchaser or payor is located in the state are  
53 included in the numerator of the apportionment fraction, provided that,  
54 if the purchaser or payor is a registered securities broker or dealer or  
55 the transaction is made through a licensed exchange, then eight percent  
56 of the net gains (not less than zero) or other income (not less than

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1 zero) is included in the numerator of the apportionment fraction. Net  
2 gains (not less than zero) from sales of other financial instruments and  
3 other income (not less than zero) from other financial instruments are  
4 included in the denominator of the apportionment fraction.

5 (I) Physical commodities. Net income (not less than zero) from sales  
6 of physical commodities are included in the numerator of the apportion-  
7 ment fraction as provided in this subparagraph. The amount of net income  
8 from sales of physical commodities included in the numerator of the  
9 apportionment fraction is determined by multiplying the net income from  
10 sales of physical commodities by a fraction, the numerator of which is  
11 the amount of receipts from sales of physical commodities actually  
12 delivered to points within the state or, if there is no actual delivery  
13 of the physical commodity, sold to purchasers located in the state, and  
14 the denominator of which is the amount of receipts from sales of phys-  
15 ical commodities actually delivered to points within and without the  
16 state or sold to purchasers located within and without the state. Net  
17 income (not less than zero) from sales of physical commodities is  
18 included in the denominator of the apportionment fraction. Net income  
19 (not less than zero) from sales of physical commodities is determined  
20 after the deduction of the cost to acquire or produce the physical  
21 commodities.

22 (b) Other receipts from broker or dealer activities. Receipts of a  
23 registered securities broker or dealer from securities or commodities  
24 broker or dealer activities described in this paragraph shall be deemed

25 to be generated within the state as described in subparagraphs one  
26 through eight of this paragraph. Receipts from such activities generated  
27 within the state shall be included in the numerator of the apportionment  
28 fraction. Receipts from such activities generated within and without the  
29 state shall be included in the denominator of the apportionment frac-  
30 tion. For the purposes of this paragraph, the term "securities" shall  
31 have the same meaning as in section 475(c)(2) of the internal revenue  
32 code and the term "commodities" shall have the same meaning as in  
33 section 475(e)(2) of the internal revenue code.

34 (1) Receipts constituting brokerage commissions derived from the  
35 execution of securities or commodities purchase or sales orders for the  
36 accounts of customers shall be deemed to be generated within the state  
37 if the mailing address in the records of the taxpayer of the customer  
38 who is responsible for paying such commissions is within the state.

39 (2) Receipts constituting margin interest earned on behalf of broker-  
40 age accounts shall be deemed to be generated within the state if the  
41 mailing address in the records of the taxpayer of the customer who is  
42 responsible for paying such margin interest is within the state.

43 (3) (A) Receipts constituting fees earned by the taxpayer for advisory  
44 services to a customer in connection with the underwriting of securities  
45 for such customer (such customer being the entity that is contemplating  
46 issuing or is issuing securities) or fees earned by the taxpayer for  
47 managing an underwriting shall be deemed to be generated within the  
48 state if the mailing address in the records of the taxpayer of such  
49 customer who is responsible for paying such fees is within the state.

50 (B) Receipts constituting the primary spread of selling concession  
51 from underwritten securities shall be deemed to be generated within the  
52 state if the customer is located in the state.

53 (C) The term "primary spread" means the difference between the price  
54 paid by the taxpayer to the issuer of the securities being marketed and  
55 the price received from the subsequent sale of the underwritten securi-  
56 ties at the initial public offering price, less any selling concession

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1 and any fees paid to the taxpayer for advisory services or any manager's  
2 fees, if such fees are not paid by the customer to the taxpayer sepa-  
3 rately. The term "public offering price" means the price agreed upon by  
4 the taxpayer and the issuer at which the securities are to be offered to  
5 the public. The term "selling concession" means the amount paid to the  
6 taxpayer for participating in the underwriting of a security where the  
7 taxpayer is not the lead underwriter.

8 (4) Receipts constituting account maintenance fees shall be deemed to  
9 be generated within the state if the mailing address in the record of  
10 the taxpayer of the customer who is responsible for paying such account  
11 maintenance fees is within the state.

12 (5) Receipts constituting fees for management or advisory services,  
13 including fees for advisory services in relation to merger or acquisi-  
14 tion activities, but excluding fees paid for services described in para-  
15 graph (d) of this subdivision, shall be deemed to be generated within  
16 the state if the mailing address in the records of the taxpayer of the  
17 customer who is responsible for paying such fees is within the state.

18 (6) Receipts constituting interest earned by the taxpayer on loans and  
19 advances made by the taxpayer to a corporation affiliated with the  
20 taxpayer but with which the taxpayer is not permitted or required to  
21 file a combined report pursuant to section two hundred ten-C of this  
22 article shall be deemed to arise from services performed at the princi-  
23 pal place of business of such affiliated corporation.

24 (7) If the taxpayer receives any of the receipts enumerated in subpar-  
25 agraphs one through four of this paragraph as a result of a securities  
26 correspondent relationship such taxpayer has with another broker or  
27 dealer with the taxpayer acting in this relationship as the clearing  
28 firm, such receipts shall be deemed to be generated within the state to  
29 extent set forth in each of such subparagraphs. The amount of such

30 receipts shall exclude the amount the taxpayer is required to pay to the  
31 correspondent firm for such correspondent relationship. If the taxpayer  
32 receives any of the receipts enumerated in subparagraphs one through  
33 four of this paragraph as as result of a securities correspondent  
34 relationship such taxpayer has with another broker or dealer with the  
35 taxpayer acting in this relationship as the introducing firm, such  
36 receipts shall be deemed to be generated within the state to the extent  
37 set forth in each of such subparagraphs.

38 (8) If, for purposes of subparagraphs one, two, clause (A) of subpara-  
39 graph three, four, or five of this paragraph the taxpayer is unable from  
40 its records to determine the mailing address of the customer, eight  
41 percent of the receipts is included in the numerator of the apportion-  
42 ment fraction.

43 (c) Receipts from credit card and similar activities. Receipts relat-  
44 ing to the bank, credit, travel and entertainment card activities  
45 described in this paragraph shall be deemed to be generated within the  
46 state as described in subparagraphs one through four of this paragraph.  
47 Receipts from such activities generated within the state shall be  
48 included in the numerator of the apportionment fraction. Receipts from  
49 such activities generated within and without the state shall be included  
50 in the denominator of the apportionment fraction.

51 (1) Receipts constituting interest, and fees and penalties in the  
52 nature of interest, from bank, credit, travel and entertainment card  
53 receivables shall be deemed to be generated within the state if the  
54 mailing address of the card holder in the records of the taxpayer is in  
55 the state;

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1 (2) Receipts from service charges and fees from such cards shall be  
2 deemed to be generated within the state if the mailing address of the  
3 card holder in the records of the taxpayer is in the state; and

4 (3) Receipts from merchant discounts shall be deemed to be generated  
5 within the state if the merchant is located within the state. In the  
6 case of a merchant with locations both within and without New York  
7 state, only receipts from merchant discounts attributable to sales made  
8 from locations within New York state are allocated to New York state. It  
9 shall be presumed that the location of the merchant is the address of  
10 the merchant shown on the invoice submitted by the merchant to the  
11 taxpayer.

12 (4) Receipts from credit card authorization processing, and clearing  
13 and settlement processing received by credit card processors shall be  
14 deemed to be generated within the state if the location where the credit  
15 card processor's customer accesses the credit card processor's network  
16 is located within the state. The amount of all other receipts received  
17 by credit card processors not specifically addressed in subdivisions one  
18 through nine of this section deemed to be generated within the state  
19 shall be determined by multiplying the total amount of such other  
20 receipts by the average of (i) eight percent and (ii) the percent of its  
21 New York access points. The percent of New York access points is the  
22 number of locations in New York from which the credit card processor's  
23 customers access the credit card processor's network divided by the  
24 total number of locations in the United States where the credit card  
25 processor's customers access the credit card processor's network.

26 (d) Receipts from certain services to investment companies. Receipts  
27 received from an investment company arising from the sale of management,  
28 administration or distribution services to such investment company are  
29 included in the denominator of the apportionment fraction. The portion  
30 of such receipts included in the numerator of the apportionment fraction  
31 (such portion referred to herein as the New York portion) shall be  
32 determined as provided in this paragraph.

33 (1) The New York portion shall be the product of the total of such  
34 receipts from the sale of such services and a fraction. The numerator of  
35 that fraction is the sum of the monthly percentages (as defined herein-

36 after) determined for each month of the investment company's taxable  
37 year for federal income tax purposes which taxable year ends within the  
38 taxable year of the taxpayer (but excluding any month during which the  
39 investment company had no outstanding shares). The monthly percentage  
40 for each such month is determined by dividing the number of shares in  
41 the investment company that are owned on the last day of the month by  
42 shareholders that are located in the state by the total number of shares  
43 in the investment company outstanding on that date. The denominator of  
44 the fraction is the number of such monthly percentages.

45 (2) (A) For purposes of this paragraph, an individual, estate or trust  
46 is deemed to be located in the state if his, her or its mailing address  
47 on the records of the investment company is in the state. A business  
48 entity is deemed to be located in the state if its commercial domicile  
49 is located in the state.

50 (B) For purposes of this paragraph, the term "investment company"  
51 means a regulated investment company, as defined in section 851 of the  
52 internal revenue code, and a partnership to which section 7704(a) of the  
53 internal revenue code applies (by virtue of section 7704(c) (3) of such  
54 code) and that meets the requirements of section 851(b) of such code.  
55 The preceding sentence shall be applied to the taxable year for federal  
56 income tax purposes of the business entity that is asserted to consti-

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1 tute an investment company that ends within the taxable year of the  
2 taxpayer.

3 (C) For purposes of this paragraph the term "receipts from an invest-  
4 ment company" includes amounts received directly from an investment  
5 company as well as amounts received from the shareholders in such  
6 investment company, in their capacity as such.

7 (D) For purposes of this paragraph, the term "management services"  
8 means the rendering of investment advice to an investment company,  
9 making determinations as to when sales and purchases of securities are  
10 to be made on behalf of an investment company, or the selling or  
11 purchasing of securities constituting assets of an investment company,  
12 and related activities, but only where such activity or activities are  
13 performed pursuant to a contract with the investment company entered  
14 into pursuant to section 15(a) of the federal investment company act of  
15 nineteen hundred forty, as amended.

16 (E) For purposes of this paragraph, the term "distribution services"  
17 means the services of advertising, servicing investor accounts (includ-  
18 ing redemptions), marketing shares or selling shares of an investment  
19 company, but, in the case of advertising, servicing investor accounts  
20 (including redemptions) or marketing shares, only where such service is  
21 performed by a person who is (or was, in the case of a closed end compa-  
22 ny) also engaged in the service of selling such shares. In the case of  
23 an open end company, such service of selling shares must be performed  
24 pursuant to a contract entered into pursuant to section 15(b) of the  
25 federal investment company act of nineteen hundred forty, as amended.

26 (F) For purposes of this paragraph, the term "administration services"  
27 includes clerical, accounting, bookkeeping, data processing, internal  
28 auditing, legal and tax services performed for an investment company but  
29 only if the provider of such service or services during the taxable year  
30 in which such service or services are sold also sells management or  
31 distribution services, as defined hereinabove, to such investment compa-  
32 ny.

33 (e) For purposes of this subdivision, a taxpayer shall use the follow-  
34 ing hierarchy to determine the commercial domicile of a business entity,  
35 based on the information known to the taxpayer or information that would  
36 be known upon reasonable inquiry: (i) the location of the treasury func-  
37 tion of the business entity; (ii) the seat of management and control of  
38 the business entity; and (iii) the billing address of the business enti-  
39 ty in the taxpayer's records. The taxpayer must exercise due diligence  
40 before rejecting a method in this hierarchy and proceeding to the next

41 method.

42 (f) For purposes of this subdivision, the term "registered securities  
43 broker or dealer" means a broker or dealer registered as such by the  
44 securities and exchange commission or a broker or dealer registered as  
45 such by the commodities futures trading commission, and shall include an  
46 OTC derivatives dealer as defined under regulations of the securities  
47 and exchange commission at title 17, part 240, section 3b-12 of the code  
48 of federal regulations (17 CFR 240.3b-12).

49 6. Receipts from railroad and trucking business. Receipts from the  
50 conduct of a railroad business (including surface railroad, whether or  
51 not operated by steam, subway railroad, elevated railroad, palace car or  
52 sleeping car business) or a trucking business are included in the numer-  
53 ator of the apportionment fraction as follows. The amount of receipts  
54 from the conduct of a railroad business or a trucking business included  
55 in the numerator of the apportionment fraction is determined by multi-  
56 plying the amount of receipts from such business by a fraction, the  
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1 numerator of which is the miles in such business within the state during  
2 the period covered by the taxpayer's report and the denominator of which  
3 is the miles in such business within and without the state during such  
4 period. Receipts from the conduct of the railroad business or a truck-  
5 ing business are included in the denominator of the apportionment frac-  
6 tion.

7 7. Receipts from aviation services. (a) Air freight forwarding.  
8 Receipts of a taxpayer from the activity of air freight forwarding  
9 acting as principal and like indirect air carrier receipts arising from  
10 such activity shall be included in the numerator of the apportionment  
11 fraction as follows: one hundred percent of such receipts if both the  
12 pickup and delivery associated with such receipts are made in the state  
13 and fifty percent of such receipts if either the pickup or delivery  
14 associated with such receipts is made in this state. Such receipts,  
15 whether the pickup or delivery associated with the receipts is within or  
16 without the state, shall be included in the denominator of the appor-  
17 tionment fraction.

18 (b) Other aviation services. (1) (A) The portion of receipts of a  
19 taxpayer from aviation services (other than services described in para-  
20 graph (a) of this subdivision) to be included in the numerator of the  
21 apportionment fraction shall be determined by multiplying its receipts  
22 from such aviation services by a percentage which is equal to the arith-  
23 metic average of the following three percentages:

24 (i) the percentage determined by dividing sixty percent of the  
25 aircraft arrivals and departures within this state by the taxpayer  
26 during the period covered by its report by the total aircraft arrivals  
27 and departures within and without this state during such period;  
28 provided, however, arrivals and departures solely for maintenance or  
29 repair, refueling (where no debarkation or embarkation of traffic  
30 occurs), arrivals and departures of ferry and personnel training flights  
31 or arrivals and departures in the event of emergency situations shall  
32 not be included in computing such arrival and departure percentage;  
33 provided, further, the commissioner may also exempt from such percentage  
34 aircraft arrivals and departures of all non-revenue flights including  
35 flights involving the transportation of officers or employees receiving  
36 air transportation to perform maintenance or repair services or where  
37 such officers or employees are transported in conjunction with an emer-  
38 gency situation or the investigation of an air disaster (other than on a  
39 scheduled flight); provided, however, that arrivals and departures of  
40 flights transporting officers and employees receiving air transportation  
41 for purposes other than specified above (without regard to remuneration)  
42 shall be included in computing such arrival and departure percentage;

43 (ii) the percentage determined by dividing sixty percent of the reven-  
44 ue tons handled by the taxpayer at airports within this state during  
45 such period by the total revenue tons handled by it at airports within

46 and without this state during such period; and

47 (iii) the percentage determined by dividing sixty percent of the  
48 taxpayer's originating revenue within this state for such period by its  
49 total originating revenue within and without this state for such period.

50 (B) As used herein the term "aircraft arrivals and departures" means  
51 the number of landings and takeoffs of the aircraft of the taxpayer and  
52 the number of air pickups and deliveries by the aircraft of such taxpay-  
53 er; the term "originating revenue" means revenue to the taxpayer from  
54 the transportation or revenue passengers and revenue property first  
55 received by the taxpayer either as originating or connecting traffic at  
56 airports; and the term "revenue tons handled" by the taxpayer at

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1 airports means the weight in tons of revenue passengers (at two hundred  
2 pounds per passenger) and revenue cargo first received either as origi-  
3 nating or connecting traffic or finally discharged by the taxpayer at  
4 airports;

5 (2) All such receipts of a taxpayer from aviation services described  
6 in this paragraph are included in the denominator of the apportionment  
7 fraction.

8 8. Receipts from sales of advertising. (a) The amount of receipts from  
9 sales of advertising in newspapers or periodicals included in the numer-  
10 ator of the apportionment fraction is determined by multiplying the  
11 total of such receipts by a fraction, the numerator of which is the  
12 number of newspapers and periodicals delivered to points within the  
13 state and the denominator of which is the number of newspapers and peri-  
14 odicals delivered to points within and without the state. The total of  
15 such receipts from sales of advertising in newspapers or periodicals is  
16 included in the denominator of the apportionment fraction.

17 (b) The amount of receipts from sales of advertising on television or  
18 radio included in the apportionment fraction is determined by multiply-  
19 ing the total of such receipts by a fraction, the numerator of which is  
20 the number of viewers or listeners within the state and the denominator  
21 of which is the number of viewers or listeners within and without the  
22 state. The total of such receipts from sales of advertising on tele-  
23 vision and radio is included in the denominator of the apportionment  
24 fraction.

25 (c) The amount of receipts from sales of advertising not described in  
26 paragraph (a) or (b) of this subdivision that is furnished, provided or  
27 delivered to, or accessed by the viewer or listener through the use of  
28 wire, cable, fiber-optic, laser, microwave, radio wave, satellite or  
29 similar successor media or any combination thereof, included in the  
30 numerator of the apportionment fraction is determined by multiplying the  
31 total of such receipts by a fraction, the numerator of which is the  
32 number of viewers or listeners within the state and the denominator of  
33 which is the number of viewers or listeners within and without the  
34 state. The total of such receipts from sales of advertising described in  
35 this paragraph is included in the denominator of the apportionment frac-  
36 tion.

37 9. Receipts from transportation or transmission of gas through pipes.  
38 Receipts from the transportation or transmission of gas through pipes  
39 are included in the numerator of the apportionment fraction as follows.  
40 The amount of receipts from the transportation or transmission of gas  
41 through pipes included in the numerator of the apportionment fraction is  
42 determined by multiplying the total amount of such receipts by a frac-  
43 tion, the numerator of which is the taxpayer's transportation units  
44 within the state and the denominator of which is the taxpayer's trans-  
45 portation units within and without the state. A transportation unit is  
46 the transportation of one cubic foot of gas over a distance of one mile.  
47 The total amount of receipts from the transportation or transmission of  
48 gas through pipes is included in the denominator of the apportionment  
49 fraction.

50 10. (a) Receipts from other services and other business receipts.

51 Receipts from services not addressed in subdivisions one through nine of  
52 this section and other business receipts not addressed in such subdivi-  
53 sions shall be included in the numerator of the apportionment fraction  
54 if the location of the customer is within the state. Such receipts from  
55 customers within and without the state are included in the denominator  
56 of the apportionment fraction. Whether the receipts are included in the  
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1 numerator of the apportionment fraction is determined according to the  
2 hierarchy of method set forth in paragraph (b) of this subdivision. The  
3 taxpayer must exercise due diligence under each method described in such  
4 paragraph (b) before rejecting it and proceeding to the next method in  
5 the hierarchy, and must base its determination on information known to  
6 the taxpayer or information that would be known to the taxpayer upon  
7 reasonable inquiry.

- 8 (b) Hierarchy of methods. (1) The benefit is received in this state;  
9 (2) Delivery destination;  
10 (3) The apportionment fraction for such receipts within the state  
11 determined pursuant to this subdivision for the preceding taxable year;  
12 or  
13 (4) The apportionment fraction in the current taxable year determined  
14 pursuant to this subdivision for those receipts that can be sourced  
15 using the hierarchy of sourcing methods in subparagraphs one and two of  
16 this paragraph.

17 11. If it shall appear that the apportionment fraction determined  
18 pursuant to this section does not result in a proper reflection of the  
19 taxpayer's business income or capital within the state, the commissioner  
20 is authorized in his or her discretion to adjust it, or the taxpayer may  
21 request that the commissioner adjust it, by (a) excluding one or more  
22 items in such determination, (b) including one or more other items in  
23 such determination, or (c) any other similar or different method calcu-  
24 lated to effect a fair and proper apportionment of the business income  
25 and capital reasonably attributed to the state. The party seeking the  
26 adjustment shall bear the burden of proof to demonstrate that the appor-  
27 tionment fraction determined pursuant to this section does not result in  
28 a proper reflection of the taxpayer's business income or capital within  
29 the state and that the proposed adjustment is appropriate.

30 § 17. The tax law is amended by adding a new section 210-B to read as  
31 follows:

32 § 210-B. Credits. 1. Investment tax credit (ITC). (a) A taxpayer  
33 shall be allowed a credit, to be computed as hereinafter provided,  
34 against the tax imposed by this article. The amount of the credit shall  
35 be the percent provided for hereinbelow of the investment credit base.  
36 The investment credit base is the cost or other basis for federal income  
37 tax purposes of tangible personal property and other tangible property,  
38 including buildings and structural components of buildings, described in  
39 paragraph (b) of this subdivision, less the amount of the nonqualified  
40 nonrecourse financing with respect to such property to the extent such  
41 financing would be excludible from the credit base pursuant to section  
42 46(c)(8) of the internal revenue code (treating such property as section  
43 thirty-eight property irrespective of whether or not it in fact consti-  
44 tutes section thirty-eight property). If, at the close of a taxable year  
45 following the taxable year in which such property was placed in service,  
46 there is a net decrease in the amount of nonqualified nonrecourse  
47 financing with respect to such property, such net decrease shall be  
48 treated as if it were the cost or other basis of property described in  
49 paragraph (b) of this subdivision acquired, constructed, reconstructed  
50 or erected during the year of the decrease in the amount of nonqualified  
51 nonrecourse financing. In the case of a combined report the term invest-  
52 ment credit base shall mean the sum of the investment credit base of  
53 each corporation included on such report. The percentage to be used to  
54 compute the credit allowed pursuant to this subdivision shall be five  
55 percent with respect to the first three hundred fifty million dollars of



1 ment credit base in excess of three hundred fifty million dollars,  
2 except that in the case of research and development property at the  
3 option of the taxpayer the applicable percentage shall be nine.

4 (b) (i) A credit shall be allowed under this subdivision with respect  
5 to tangible personal property and other tangible property, including  
6 buildings and structural components of buildings, which are: depreciable  
7 pursuant to section one hundred sixty-seven of the internal revenue  
8 code, have a useful life of four years or more, are acquired by purchase  
9 as defined in section one hundred seventy-nine (d) of the internal  
10 revenue code, have a situs in this state and are (A) principally used by  
11 the taxpayer in the production of goods by manufacturing, processing,  
12 assembling, refining, mining, extracting, farming, agriculture, horti-  
13 culture, floriculture, viticulture or commercial fishing, (B) industrial  
14 waste treatment facilities or air pollution control facilities, used in  
15 the taxpayer's trade or business, (C) research and development property,  
16 or (D) principally used in the ordinary course of the taxpayer's trade  
17 or business as a broker or dealer in connection with the purchase or  
18 sale (which shall include but not be limited to the issuance, entering  
19 into, assumption, offset, assignment, termination, or transfer) of  
20 stocks, bonds or other securities as defined in section four hundred  
21 seventy-five (c) (2) of the Internal Revenue Code, or of commodities as  
22 defined in section four hundred seventy-five (e) of the Internal Revenue  
23 Code, (E) principally used in the ordinary course of the taxpayer's  
24 trade or business of providing investment advisory services for a regu-  
25 lated investment company as defined in section eight hundred fifty-one  
26 of the Internal Revenue Code, or lending, loan arrangement or loan orig-  
27 ination services to customers in connection with the purchase or sale  
28 (which shall include but not be limited to the issuance, entering into,  
29 assumption, offset, assignment, termination, or transfer) of securities  
30 as defined in section four hundred seventy-five (c) (2) of the Internal  
31 Revenue Code, (F) originally used in the ordinary course of the taxpay-  
32 er's business as an exchange registered as a national securities  
33 exchange within the meaning of sections 3(a) (1) and 6(a) of the Securi-  
34 ties Exchange Act of 1934 or a board of trade as defined in section  
35 1410(a) (1) of the New York Not-for-Profit Corporation Law or as an enti-  
36 ty that is wholly owned by one or more such national securities  
37 exchanges or boards of trade and that provides automation or technical  
38 services thereto, or (G) principally used as a qualified film production  
39 facility including qualified film production facilities having a situs  
40 in an empire zone designated as such pursuant to article eighteen-B of  
41 the general municipal law, where the taxpayer is providing three or more  
42 services to any qualified film production company using the facility,  
43 including such services as a studio lighting grid, lighting and grip  
44 equipment, multi-line phone service, broadband information technology  
45 access, industrial scale electrical capacity, food services, security  
46 services, and heating, ventilation and air conditioning. Provided,  
47 however, a taxpayer shall not be allowed the credit provided by clauses  
48 (D), (E) and (F) of this subparagraph unless (i) eighty percent or more  
49 of the employees performing the administrative and support functions  
50 resulting from or related to the qualifying uses of such equipment are  
51 located in this state or (ii) the average number of employees that  
52 perform the administrative and support functions resulting from or  
53 related to the qualifying uses of such equipment and are located in this  
54 state during the taxable year for which the credit is claimed is equal  
55 to or greater than ninety-five percent of the average number of employ-  
56 ees that perform these functions and are located in this state during

1 the thirty-six months immediately preceding the year for which the cred-  
2 it is claimed, or (iii) the number of employees located in this state



3 during the taxable year for which the credit is claimed is equal to or  
4 greater than ninety percent of the number of employees located in this  
5 state on December thirty-first, nineteen hundred ninety-eight or, if the  
6 taxpayer was not a calendar year taxpayer in nineteen hundred ninety-  
7 eight, the last day of its first taxable year ending after December  
8 thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes  
9 subject to tax in this state after the taxable year beginning in nine-  
10 teen hundred ninety-eight, then the taxpayer is not required to satisfy  
11 the employment test provided in the preceding sentence of this subpara-  
12 graph for its first taxable year. For purposes of clause (iii) of this  
13 subparagraph the employment test will be based on the number of employ-  
14 ees located in this state on the last day of the first taxable year the  
15 taxpayer is subject to tax in this state. If the uses of the property  
16 must be aggregated to determine whether the property is principally used  
17 in qualifying uses, then either each affiliate using the property must  
18 satisfy this employment test or this employment test must be satisfied  
19 through the aggregation of the employees of the taxpayer, its affiliated  
20 regulated broker, dealer, and registered investment adviser using the  
21 property. For purposes of this subdivision, the term "goods" shall not  
22 include electricity.

23 (ii) For purposes of this paragraph, the following definitions shall  
24 apply--

25 (A) Manufacturing shall mean the process of working raw materials into  
26 wares suitable for use or which gives new shapes, new quality or new  
27 combinations to matter which already has gone through some artificial  
28 process by the use of machinery, tools, appliances and other similar  
29 equipment. Property used in the production of goods shall include  
30 machinery, equipment or other tangible property which is principally  
31 used in the repair and service of other machinery, equipment or other  
32 tangible property used principally in the production of goods and shall  
33 include all facilities used in the production operation, including stor-  
34 age of material to be used in production and of the products that are  
35 produced.

36 (B) Research and development property shall mean property which is  
37 used for purposes of research and development in the experimental or  
38 laboratory sense. Such purposes shall not be deemed to include the ordi-  
39 nary testing or inspection of materials or products for quality control,  
40 efficiency surveys, management studies, consumer surveys, advertising,  
41 promotions, or research in connection with literary, historical or simi-  
42 lar projects.

43 (C) Industrial waste treatment facilities shall mean property consti-  
44 tuting facilities for the treatment, neutralization or stabilization of  
45 industrial waste and other wastes (as the terms "industrial waste" and  
46 "other wastes" are defined in section 17-0105 of the environmental  
47 conservation law) from a point immediately preceding the point of such  
48 treatment, neutralization or stabilization to the point of disposal,  
49 including the necessary pumping and transmitting facilities, but exclud-  
50 ing such facilities installed for the primary purpose of salvaging mate-  
51 rials which are usable in the manufacturing process or are marketable.

52 (D) Air pollution control facilities shall mean property constituting  
53 facilities which remove, reduce, or render less noxious air contaminants  
54 emitted from an air contamination source (as the terms "air contaminant"  
55 and "air contamination source" are defined in section 19-0107 of the  
56 environmental conservation law) from a point immediately preceding the

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1 point of such removal, reduction or rendering to the point of discharge  
2 of air, meeting emission standards as established by the department of  
3 environmental conservation, but excluding such facilities installed for  
4 the primary purpose of salvaging materials which are usable in the manu-  
5 facturing process or are marketable and excluding those facilities which  
6 rely for their efficacy on dilution, dispersion or assimilation of air  
7 contaminants in the ambient air after emission. Such term shall further

8 include flue gas desulfurization equipment and attendant sludge disposal  
9 facilities, fluidized bed boilers, precombustion coal cleaning facili-  
10 ties or other facilities that conform with this subdivision and which  
11 comply with the provisions of the state acid deposition control act set  
12 forth in title nine of article nineteen of the environmental conserva-  
13 tion law.

14 (E) The terms "qualified film production facility" and "qualified film  
15 production company" shall have the same meaning as in section twenty-  
16 four of this chapter.

17 (iii) However, such credit shall be allowed with respect to industrial  
18 waste treatment facilities and air pollution control facilities only on  
19 condition that such facilities have been certified by the state commis-  
20 sioner of environmental conservation or his designated representative,  
21 pursuant to subdivision one of section 17-0707 or subdivision one of  
22 section 19-0309 of the environmental conservation law, as complying with  
23 applicable provisions of the environmental conservation law, the public  
24 health law, the state sanitary code and codes, rules, regulations,  
25 permits or orders issued pursuant thereto.

26 (c) A taxpayer shall not be allowed a credit under this subdivision  
27 with respect to tangible personal property and other tangible property,  
28 including buildings and structural components of buildings, which it  
29 leases to any other person or corporation except where a taxpayer leases  
30 property to an affiliated regulated broker, dealer, registered invest-  
31 ment adviser, national securities exchange or board of trade (or other  
32 entity described in clause (F) of subparagraph (i) of paragraph (b) of  
33 this subdivision) that uses such property in accordance with clause (D),  
34 (E) or (F) of subparagraph (i) of paragraph (b) of this subdivision.  
35 For purposes of the preceding sentence, any contract or agreement to  
36 lease or rent or for a license to use such property shall be considered  
37 a lease. Provided, however, in determining whether a taxpayer shall be  
38 allowed a credit under this subdivision with respect to such property,  
39 any election made with respect to such property pursuant to the  
40 provisions of paragraph eight of subsection (f) of section one hundred  
41 sixty-eight of the internal revenue code, as such paragraph was in  
42 effect for agreements entered into prior to January first, nineteen  
43 hundred eighty-four, shall be disregarded. For purposes of this para-  
44 graph, the use of a qualified film production facility by a qualified  
45 film production company shall not be considered a lease of such facility  
46 to such company.

47 (d) Except as otherwise provided in this paragraph, the credit allowed  
48 under this subdivision for any taxable year shall not reduce the tax due  
49 for such year to less than the higher of the amounts prescribed in para-  
50 graphs (c) and (d) of subdivision one of this section. However, if the  
51 amount of credit allowable under this subdivision for any taxable year  
52 reduces the tax to such amount, any amount of credit allowed for a taxa-  
53 ble year commencing prior to January first, nineteen hundred eighty-sev-  
54 en and not deductible in such taxable year may be carried over to the  
55 following year or years and may be deducted from the taxpayer's tax for  
56 such year or years but in no event shall such credit be carried over to

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1 taxable years commencing on or after January first, two thousand two,  
2 and any amount of credit allowed for a taxable year commencing on or  
3 after January first, nineteen hundred eighty-seven and not deductible in  
4 such year may be carried over to the fifteen taxable years next follow-  
5 ing such taxable year and may be deducted from the taxpayer's tax for  
6 such year or years. In lieu of such carryover, any such taxpayer which  
7 qualifies as a new business under paragraph (j) of this subdivision may  
8 elect to treat the amount of such carryover as an overpayment of tax to  
9 be credited or refunded in accordance with the provisions of section ten  
10 hundred eighty-six of this chapter, provided, however, the provisions of  
11 subsection (c) of section ten hundred eighty-eight of this chapter  
12 notwithstanding, no interest shall be paid thereon.

13 (e) (1) With respect to property which is depreciable pursuant to  
14 section one hundred sixty-seven of the internal revenue code but is not  
15 subject to the provisions of section one hundred sixty-eight of such  
16 code and which is disposed of or ceases to be in qualified use prior to  
17 the end of the taxable year in which the credit is to be taken, the  
18 amount of the credit shall be that portion of the credit provided for in  
19 this subdivision which represents the ratio which the months of quali-  
20 fied use bear to the months of useful life. If property on which credit  
21 has been taken is disposed of or ceases to be in qualified use prior to  
22 the end of its useful life, the difference between the credit taken and  
23 the credit allowed for actual use must be added back in the year of  
24 disposition. Provided, however, if such property is disposed of or ceas-  
25 es to be in qualified use after it has been in qualified use for more  
26 than twelve consecutive years, it shall not be necessary to add back the  
27 credit as provided in this subparagraph. The amount of credit allowed  
28 for actual use shall be determined by multiplying the original credit by  
29 the ratio which the months of qualified use bear to the months of useful  
30 life. For purposes of this subparagraph, useful life of property shall  
31 be the same as the taxpayer uses for depreciation purposes when comput-  
32 ing his federal income tax liability.

33 (2) Except with respect to that property to which subparagraph four of  
34 this paragraph applies, with respect to three-year property, as defined  
35 in subsection (e) of section one hundred sixty-eight of the internal  
36 revenue code, which is disposed of or ceases to be in qualified use  
37 prior to the end of the taxable year in which the credit is to be taken,  
38 the amount of the credit shall be that portion of the credit provided  
39 for in this subdivision which represents the ratio which the months of  
40 qualified use bear to thirty-six. If property on which credit has been  
41 taken is disposed of or ceases to be in qualified use prior to the end  
42 of thirty-six months, the difference between the credit taken and the  
43 credit allowed for actual use must be added back in the year of disposi-  
44 tion. The amount of credit allowed for actual use shall be determined by  
45 multiplying the original credit by the ratio which the months of quali-  
46 fied use bear to thirty-six.

47 (3) Except with respect to that property to which subparagraph four of  
48 this paragraph applies, with respect to property subject to the  
49 provisions of section one hundred sixty-eight of the internal revenue  
50 code, other than three-year property as defined in subsection (e) of  
51 such section one hundred sixty-eight which is disposed of or ceases to  
52 be in qualified use prior to the end of the taxable year in which the  
53 credit is to be taken, the amount of the credit shall be that portion of  
54 the credit provided for in this subdivision which represents the ratio  
55 which the months of qualified use bear to sixty. If property on which  
56 credit has been taken is disposed of or ceases to be in qualified use

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1 prior to the end of sixty months, the difference between the credit  
2 taken and the credit allowed for actual use must be added back in the  
3 year of disposition. The amount of credit allowed for actual use shall  
4 be determined by multiplying the original credit by the ratio which the  
5 months of qualified use bear to sixty.

6 (4) With respect to any property to which section one hundred sixty-  
7 eight of the internal revenue code applies, which is a building or a  
8 structural component of a building and which is disposed of or ceases to  
9 be in qualified use prior to the end of the taxable year in which the  
10 credit is to be taken, the amount of the credit shall be that portion of  
11 the credit provided for in this subdivision which represents the ratio  
12 which the months of qualified use bear to the total number of months  
13 over which the taxpayer chooses to deduct the property under the inter-  
14 nal revenue code. If property on which credit has been taken is disposed  
15 of or ceases to be in qualified use prior to the end of the period over  
16 which the taxpayer chooses to deduct the property under the internal  
17 revenue code, the difference between the credit taken and the credit

18 allowed for actual use must be added back in the year of disposition.  
19 Provided, however, if such property is disposed of or ceases to be in  
20 qualified use after it has been in qualified use for more than twelve  
21 consecutive years, it shall not be necessary to add back the credit as  
22 provided in this subparagraph. The amount of credit allowed for actual  
23 use shall be determined by multiplying the original credit by the ratio  
24 which the months of qualified use bear to the total number of months  
25 over which the taxpayer chooses to deduct the property under the inter-  
26 nal revenue code.

27 (5) For purposes of this paragraph, property (i) which is described in  
28 subparagraph two, three or four of this paragraph, and (ii) which is  
29 subject to subparagraph eleven of paragraph (a) of subdivision nine and  
30 subparagraph ten of paragraph (b) of subdivision nine of section two  
31 hundred eight of this chapter, shall be treated as property which is  
32 depreciable pursuant to section one hundred sixty-seven of the internal  
33 revenue code but is not subject to section one hundred sixty-eight of  
34 such code.

35 (6) For purposes of this paragraph, where a credit is allowed with  
36 respect to an air pollution control facility on the basis of a certif-  
37 icate of compliance issued pursuant to the environmental conservation  
38 law and the certificate is revoked pursuant to subdivision three of  
39 section 19-0309 of the environmental conservation law, such revocation  
40 shall constitute a disposal or cessation of qualified use, unless such  
41 facility is described in clause (A) or (C) of subparagraph (ii) of para-  
42 graph (b) of this subdivision. Also for purposes of this subparagraph,  
43 the use of an air pollution control facility or an industrial waste  
44 treatment facility for the primary purpose of salvaging materials which  
45 are usable in the manufacturing process or are marketable shall consti-  
46 tute a cessation of qualified use, unless such facility is described in  
47 clause (A) or (C) of subparagraph (ii) of paragraph (b) of this subdivi-  
48 sion.

49 (7) For taxable years commencing on or after January first, nineteen  
50 hundred eighty-seven, the amount required to be added back pursuant to  
51 this paragraph shall be augmented by an amount equal to the product of  
52 such amount and the underpayment rate of interest (without regard to  
53 compounding), set by the commissioner of taxation and finance pursuant  
54 to subsection (e) of section one thousand ninety-six, in effect on the  
55 last day of the taxable year.

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1 (8) If, as of the close of the taxable year, there is a net increase  
2 with respect to the taxpayer in the amount of nonqualified nonrecourse  
3 financing (within the meaning of section 46(c) (8) of the internal  
4 revenue code) with respect to any property with respect to which the  
5 credit under this subdivision was limited based on attributable nonqual-  
6 ified nonrecourse financing, then an amount equal to the decrease in  
7 such credit which would have resulted from reducing, by the amount of  
8 such net increase, the cost or other basis taken into account with  
9 respect to such property must be added back in such taxable year. The  
10 amount of nonqualified nonrecourse financing shall not be treated as  
11 increased by reason of a transfer of (or agreement to transfer) any  
12 evidence of an indebtedness if such transfer occurs (or such agreement  
13 is entered into) more than one year after the date such indebtedness was  
14 incurred.

15 (9) (A) Where property with respect to which credit has been allowed  
16 under this subdivision is disposed of by transfer to the taxpayer in a  
17 qualified transaction, and such disposition requires, pursuant to this  
18 paragraph (without regard to this subparagraph) that such credit be  
19 decreased (where the disposition occurs in the taxable year in which the  
20 property is placed in service by the transferor) or that a portion of  
21 such credit be added back by the transferor, then clause (B) or clause  
22 (C) of this subparagraph shall apply.

23 (B) If the taxpayer and the transferor jointly elect, at such time and

24 in such manner as the commissioner may prescribe, the following shall  
25 apply:

26 (i) such portion shall not be required to be added back by the  
27 transferor,

28 (ii) the amount of unused credit shall not be deducted from tax other-  
29 wise due by the transferor on any return (including an amended return),  
30 and shall not be so deducted as part of any audit adjustment or any  
31 other determination, and

32 (iii) the amount of unused credit shall be treated as an amount of  
33 credit of the taxpayer under this subdivision carried forward by the  
34 taxpayer to its taxable year in which such transfer occurred, as if the  
35 credit allowed to the transferor with respect to such property had  
36 originally been allowed to the taxpayer both as to amount and first date  
37 of qualified use, and as if the period of qualified use by the transfe-  
38 ror prior to the transfer had been a period of such use by the taxpayer.  
39 Any amount of credit treated as carried forward to the taxable year  
40 pursuant to this subparagraph shall be applied as provided in clause (H)  
41 of this subparagraph.

42 (C) If the taxpayer and the transferor do not make the election  
43 described in clause (B) of this subparagraph, then the amount of credit  
44 required pursuant to this paragraph to be added back by the transferor  
45 shall be treated as an amount of credit of the taxpayer under this  
46 subdivision to be carried forward by the taxpayer to its taxable year in  
47 which such transfer occurred, as if the credit allowed to the transferor  
48 with respect to such property had originally been allowed to the taxpay-  
49 er both as to amount and first date of qualified use, and as if the  
50 period of qualified use by the transferor prior to the transfer had been  
51 a period of such use by the taxpayer. Any amount of credit treated as  
52 carried forward to the taxable year pursuant to this subparagraph shall  
53 be applied as provided in clause (H) of this subparagraph.

54 (D) The term "qualified transaction" shall mean a transaction which is  
55 a reorganization described in section 368(a)(1)(D) of the internal  
56 revenue code, wherein (i) substantially all of the assets of the  
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1 transferor necessary to continue the operation of a division or divi-  
2 sions of the transferor are transferred to the taxpayer in a transaction  
3 to which section 351 of such code applies, and (ii) stock or securities  
4 of the taxpayer held by the transferor are distributed pursuant to  
5 section 355 of such code.

6 (E) The term "unused credit" shall mean the amount of credit shown as  
7 carried forward to the transaction year on the transferor's tax return  
8 for its taxable year immediately preceding the transaction year with  
9 respect to the property described in clause (A) of this subparagraph.

10 (F) The term "transaction year" means the taxable year in which the  
11 qualified transaction occurs.

12 (G) Notwithstanding any other provision of law to the contrary, in the  
13 case of allowance of credit pursuant to this subparagraph to a taxpayer  
14 the commissioner shall have the authority to reveal to the taxpayer any  
15 information, with respect to the credit of the transferor, which is the  
16 basis for the denial in whole or in part of the credit claimed by such  
17 taxpayer.

18 (H) Where a credit is allowed to a taxpayer pursuant to this subpara-  
19 graph, the taxpayer may treat the amount of such credit as an overpay-  
20 ment of tax to be credited or refunded in accordance with the provisions  
21 of section ten hundred eighty-six of this chapter, provided, however,  
22 the provisions of subsection (c) of section ten hundred eighty-eight of  
23 this chapter notwithstanding, no interest shall be paid thereon. Such  
24 credit shall be allowed against the tax imposed by this article with  
25 respect to the second succeeding taxable year next following the trans-  
26 action year, provided that not more than one-fourth of the amount of  
27 such credit may be applied by the taxpayer, whether to reduce tax other-  
28 wise due or to be treated as an overpayment to be credited or refunded,

29 with respect to such second succeeding taxable year and each of the next  
30 three taxable years following such second succeeding taxable year.

31 (f) For purposes of paragraph (d) of this subdivision, a new business  
32 shall include any corporation, except a corporation which:

33 (1) over fifty percent of the number of shares of stock entitling the  
34 holders thereof to vote for the election of directors or trustees is  
35 owned or controlled, either directly or indirectly, by a taxpayer  
36 subject to tax under this article; section one hundred eighty-three, one  
37 hundred eighty-four or one hundred eighty-five of article nine; or arti-  
38 cle thirty-three of this chapter; or

39 (2) is substantially similar in operation and in ownership to a busi-  
40 ness entity (or entities) taxable, or previously taxable, under this  
41 article; section one hundred eighty-three, one hundred eighty-four,  
42 former section one hundred eighty-five or former section one hundred  
43 eighty-six of article nine; article thirty-two of this chapter as such  
44 article was in effect on December thirty-first, two thousand fourteen;  
45 article thirty-three of this chapter; article twenty-three of this chap-  
46 ter or which would have been subject to tax under such article twenty-  
47 three (as such article was in effect on January first, nineteen hundred  
48 eighty) or the income (or losses) of which is (or was) includable under  
49 article twenty-two of this chapter whereby the intent and purpose of  
50 this paragraph and paragraph (d) of this subdivision with respect to  
51 refunding of credit to new business would be evaded; or

52 (3) has been subject to tax under this article or former article thir-  
53 ty-two of this chapter for more than five taxable years (excluding short  
54 taxable years).

55 2. Employment Incentive Credit (EIC). (a) (i) Application of credit.  
56 Where a taxpayer is allowed a credit under subdivision one of this

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1 section, other than at the optional rate applicable to research and  
2 development property, the taxpayer shall be allowed a credit for each of  
3 the two years next succeeding the taxable year for which the credit  
4 under such subdivision one is allowed with respect to such property,  
5 whether or not deductible in such taxable year or in subsequent taxable  
6 years pursuant to paragraph (d) of such subdivision one. Provided,  
7 however, that the credit allowable under this subdivision for any taxa-  
8 ble year shall be allowed only if the average number of employees during  
9 such taxable year is at least one hundred one percent of the average  
10 number of employees during the employment base year. The employment base  
11 year shall be the taxable year immediately preceding the taxable year  
12 for which the credit under such subdivision one is allowed except that  
13 if the taxpayer was not subject to tax and did not have a taxable year  
14 immediately preceding the taxable year for which the credit under such  
15 subdivision one of this section is allowed, the employment base year  
16 shall be the taxable year in which the credit under such subdivision one  
17 is allowed.

18 (ii) Amount of credit. The amount of the credit allowed under this  
19 subdivision shall be as set forth in the following table:

<u>Average number of employees during the</u> <u>taxable year expressed as a percentage</u> <u>of average employees in employment</u> <u>base years</u>	<u>Credit allowed under this</u> <u>subdivision expressed as a</u> <u>percentage of the applicable</u> <u>investment credit basis</u>
<u>Less than 102%</u>	<u>1.5%</u>
<u>At least 102% and less than 103%</u>	<u>2%</u>
<u>At least 103%</u>	<u>2.5%</u>

27 (b) Average number of employees. The average number of employees in a  
28 taxable year shall be computed by ascertaining the number of employees  
29 within the state, except general executive officers, employed by the  
30 taxpayer on the thirty-first day of March, the thirtieth day of June,  
31 the thirtieth day of September and the thirty-first day of December in  
32 the taxable year, by adding together the number of employees ascertained  
33 on each of such dates and dividing the sum so obtained by the number of

34 such above mentioned dates occurring within the taxable year. However,  
35 with respect to the employment base year, there shall be excluded there-  
36 from any employee with respect to whom a credit provided for under  
37 subdivision six of this section is claimed, for the taxable year, based  
38 on employment within a zone equivalent area designated as such pursuant  
39 to article eighteen-B of the general municipal law.

40 (c) Carryover. In no event shall the credit herein provided for be  
41 allowed in an amount which will reduce the tax payable to less than the  
42 fixed dollar minimum amount prescribed in paragraph (d) of subdivision  
43 one of section two hundred ten of this article. However, if the amount  
44 of credit allowable under this subdivision for any taxable year reduces  
45 the tax to such amount or if the taxpayer otherwise pays tax based on  
46 the fixed dollar minimum amount, any amount of credit not deductible in  
47 such taxable year may be carried over to the fifteen taxable years imme-  
48 diately following such taxable year and may be deducted from the taxpay-  
49 er's tax for such year or years.

50 3. Empire zone investment tax credit (EZ-ITC). (a) A taxpayer shall be  
51 allowed a credit, to be computed as herein provided, against the tax  
52 imposed by this article if the taxpayer has been certified pursuant to  
53 article eighteen-B of the general municipal law. The amount of the cred-  
54 it shall be ten percent of the cost or other basis for federal income  
55 tax purposes of tangible personal property and other tangible property,  
56 including buildings and structural components of buildings, described in

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1 paragraph (b) of this subdivision, which is located within an empire  
2 zone designated as such pursuant to article eighteen-B of such law, but  
3 only if the acquisition, construction, reconstruction or erection of  
4 such property occurred or was commenced on or after the date of such  
5 designation and prior to the expiration thereof. Provided, however, that  
6 in the case of an acquisition, construction, reconstruction or erection  
7 which was commenced during such period and continued or completed subse-  
8 quently, such credit shall be ten percent of the portion of the cost or  
9 other basis for federal income tax purposes attributable to such period,  
10 which portion shall be ascertained by multiplying such cost or basis by  
11 a fraction the numerator of which shall be the expenditures paid or  
12 incurred during such period for such purposes and the denominator of  
13 which shall be the total of all expenditures paid or incurred for such  
14 acquisition, construction, reconstruction or erection.

15 (b) Qualified property. A credit shall be allowed under this subdivi-  
16 sion with respect to tangible personal property and other tangible prop-  
17 erty, including buildings and structural components of buildings, which

18 (i) are depreciable pursuant to section one hundred sixty-seven of the  
19 internal revenue code,

20 (ii) have a useful life of four years or more,

21 (iii) are acquired by purchase as defined in section one hundred  
22 seventy-nine (d) of the internal revenue code,

23 (iv) have a situs in an empire zone designated as such pursuant to  
24 article eighteen-B of the general municipal law, and

25 (v) are (A) principally used by the taxpayer in the production of  
26 goods by manufacturing, processing, assembling, refining, mining,  
27 extracting, farming, agriculture, horticulture, floriculture, viticul-  
28 ture or commercial fishing,

29 (B) industrial waste treatment facilities or air pollution control  
30 facilities used in the taxpayer's trade or business,

31 (C) research and development property,

32 (D) principally used in the ordinary course of the taxpayer's trade or  
33 business as a broker or dealer in connection with the purchase or sale  
34 (which shall include but not be limited to the issuance, entering into,  
35 assumption, offset, assignment, termination, or transfer) of stocks,  
36 bonds or other securities as defined in section four hundred seventy-  
37 five (c) (2) of the Internal Revenue Code, or of commodities as defined  
38 in section four hundred seventy-five (e) of the Internal Revenue Code,



39 (E) principally used in the ordinary course of the taxpayer's trade or  
40 business of providing investment advisory services for a regulated  
41 investment company as defined in section eight hundred fifty-one of the  
42 Internal Revenue Code, or lending, loan arrangement, or loan origination  
43 services to customers in connection with the purchase or sale (which  
44 shall include but not be limited to the issuance, entering into, assump-  
45 tion, offset, assignment, termination or transfer) of securities as  
46 defined in section four hundred seventy-five (c)(2) of the Internal  
47 Revenue Code,

48 (E-1) principally used in the ordinary course of the taxpayer's trade  
49 or business of providing investment advisory services or the service of  
50 managing investment portfolios to achieve specific investment objectives  
51 for accounts over one million dollars of accredited investors (as that  
52 term is defined in rule 501 of regulation D of the Securities Act of  
53 1933), if the taxpayer satisfies the following criteria:

54 (I) the taxpayer is a regulated broker or dealer or an affiliate of a  
55 regulated broker or dealer,

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1 (II) the taxpayer is registered as an investment adviser under section  
2 two hundred three of the Investment Advisers Act of 1940, as amended,  
3 and

4 (III) at least one client of the taxpayer is a regulated investment  
5 company as defined in section eight hundred fifty-one of the internal  
6 revenue code that has assets of one hundred million dollars, or

7 (F) principally used in the ordinary course of the taxpayer's business  
8 as an exchange registered as a national securities exchange within the  
9 meaning of sections 3(a)(1) and 6(a) of the Securities Exchange Act of  
10 1934 or a board of trade as defined in subdivision one of paragraph (a)  
11 of section fourteen hundred ten of the not-for-profit corporation law or  
12 as an entity that is wholly owned by one or more such national securi-  
13 ties exchanges or boards or trade and that provides automation or tech-  
14 nical services thereto.

15 (vi) For purposes of clauses (D), (E), (E-1) and (F) of subparagraph  
16 (v) of this paragraph, property purchased by a taxpayer affiliated with  
17 a regulated broker, dealer, registered investment adviser, national  
18 securities exchange or board of trade is allowed a credit under this  
19 subdivision if the property is used by its affiliated regulated broker,  
20 dealer, registered investment adviser or national securities exchange or  
21 board of trade in accordance with this subdivision. For purposes of  
22 determining if the property is principally used in qualifying uses, the  
23 uses by the taxpayer described in clauses (D), (E) and (E-1) of subpara-  
24 graph (v) of this paragraph may be aggregated. In addition, the uses by  
25 the taxpayer, its affiliated regulated broker, dealer and registered  
26 investment adviser under any of those clauses may be aggregated.  
27 Provided, however, a taxpayer shall not be allowed the credit provided  
28 by clauses (D), (E), (E-1) and (F) of subparagraph (v) of this paragraph  
29 unless

30 (I) eighty percent or more of the employees performing the administra-  
31 tive and support functions resulting from or related to the qualifying  
32 uses of such equipment are located in this state, or

33 (II) the average number of employees that perform the administrative  
34 and support functions resulting from or related to the qualifying uses  
35 of such equipment and are located in this state during the taxable year  
36 for which the credit is claimed is equal to or greater than ninety-five  
37 percent of the average number of employees that perform these functions  
38 and are located in this state during the thirty-six months immediately  
39 preceding the year for which the credit is claimed, or

40 (III) the number of employees located in this state during the taxable  
41 year for which the credit is claimed is equal to or greater than ninety  
42 percent of the number of employees located in this state on December  
43 thirty-first, nineteen hundred ninety-eight or, if the taxpayer was not  
44 a calendar year taxpayer in nineteen hundred ninety-eight, the last day



45 of its first taxable year ending after December thirty-first, nineteen  
46 hundred ninety-eight. If the taxpayer becomes subject to tax in this  
47 state after the taxable year beginning in nineteen hundred ninety-eight,  
48 then the taxpayer is not required to satisfy the employment test  
49 provided in the preceding sentence of this subparagraph for its first  
50 taxable year.

51 (vii) For the purposes of clause (III) of subparagraph (vi) of this  
52 paragraph the employment test will be based on the number of employees  
53 located in this state on the last day of the first taxable year the  
54 taxpayer is subject to tax in this state. If the uses of the property  
55 must be aggregated to determine whether the property is principally used  
56 in qualifying uses, then either each affiliate using the property must

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1 satisfy this employment test or this employment test must be satisfied  
2 through the aggregation of the employees of the taxpayer, its affiliated  
3 regulated broker, dealer, and registered investment adviser using the  
4 property.

5 (viii) For the purpose of this subdivision, the term "goods" shall not  
6 include electricity.

7 (ix) For purposes of this subdivision, "manufacturing" shall mean the  
8 process of working raw materials into wares suitable for use or which  
9 gives new shapes, new quality or new combinations to matter which  
10 already has gone through some artificial process by the use of machin-  
11 ery, tools, appliances and other similar equipment. Property used in the  
12 production of goods shall include machinery, equipment or other tangible  
13 property which is principally used in the repair and service of other  
14 machinery, equipment or other tangible property used principally in the  
15 production of goods and shall include all facilities used in the  
16 production operation, including storage of material to be used in  
17 production and of the products that are produced. For purposes of this  
18 subdivision, the terms "research and development property", "industrial  
19 waste treatment facilities", and "air pollution control facilities"  
20 shall have the meanings ascribed thereto by clauses (B), (C) and (D),  
21 respectively, of subparagraph (iv) of paragraph (b) of subdivision one  
22 of this section, and the provisions of subparagraph (v) of such para-  
23 graph (b) shall apply.

24 (c) Nonqualified property. A taxpayer shall not be allowed a credit  
25 under this subdivision with respect to any tangible personal property  
26 and other tangible property, including buildings and structural compo-  
27 nents of buildings, which it leases to any other person or corporation  
28 except where a taxpayer leases property to an affiliated regulated  
29 broker, dealer, registered investment adviser, national securities  
30 exchange or board of trade or other entity described in clause (F) of  
31 subparagraph (v) of paragraph (b) of this subdivision that uses such  
32 property in accordance with clause (D), (E), (E-1) or (F) of subpara-  
33 graph (v) of paragraph (b) of this subdivision. For purposes of the  
34 preceding sentence, any contract or agreement to lease or rent or for a  
35 license to use such property shall be considered a lease. Provided,  
36 however, in determining whether a taxpayer shall be allowed a credit  
37 under this subdivision with respect to such property, any election made  
38 with respect to such property pursuant to the provisions of paragraph  
39 eight of subsection (f) of section one hundred sixty-eight of the inter-  
40 nal revenue code, as such paragraph was in effect for agreements entered  
41 into prior to January first, nineteen hundred eighty-four, shall be  
42 disregarded.

43 (d) Carryover. The credit allowed under this subdivision for any taxa-  
44 ble year shall not reduce the tax due for such year to less than the  
45 fixed dollar minimum amount prescribed in paragraph (d) of subdivision  
46 one of section two hundred ten of this article. Provided, however, that  
47 if the amount of credit allowed under this subdivision for any taxable  
48 year reduces the tax to such amount or if the taxpayer otherwise pays  
49 tax based on the fixed dollar minimum amount, any amount of credit not

50 deductible in such taxable year may be carried over to the following  
51 year or years and may be deducted from the taxpayer's tax for such year  
52 or years. In lieu of such carryover, any such taxpayer which qualifies  
53 as a new business under paragraph (f) of subdivision one of this section  
54 may elect, on its report for its taxable year with respect to which such  
55 credit is allowed, to treat fifty percent of the amount of such carry-  
56 over as an overpayment of tax to be credited or refunded in accordance

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1 with the provisions of section one thousand eighty-six of this chapter.  
2 In addition, any taxpayer which is approved as the owner of a qualified  
3 investment project or a significant capital investment project pursuant  
4 to subdivision (w) of section nine hundred fifty-nine of the general  
5 municipal law, on its report for its taxable year with respect to which  
6 such credit is allowed, in lieu of such carryover, may elect to treat  
7 fifty percent of the amount of such carryover which is attributable to  
8 the credit allowed under this subdivision for property which is part of  
9 such project as an overpayment of tax to be credited or refunded in  
10 accordance with the provisions of section one thousand eighty-six of  
11 this chapter. Provided, however, such owner shall be allowed such refund  
12 for a maximum of ten taxable years with respect to such qualified  
13 investment project and each significant capital investment project,  
14 starting with the first taxable year in which property comprising such  
15 project is placed in service. Provided, further, however, the provisions  
16 of subsection (c) of section one thousand eighty-eight of this chapter  
17 notwithstanding, no interest shall be paid thereon.

18 (d-1) Any carryover of a credit from prior taxable years will not be  
19 allowed if an empire zone retention certificate is not issued pursuant  
20 to subdivision (w) of section nine hundred fifty-nine of the general  
21 municipal law to the empire zone enterprise which is the basis of the  
22 credit.

23 (e) At the option of the taxpayer, the taxpayer may choose to claim  
24 the credit described in paragraph (a) of this subdivision for property  
25 which also qualifies for the credit provided under subdivision one of  
26 this section. A taxpayer shall not be allowed a credit under this subdi-  
27 vision with respect to any property described in paragraph (a) of this  
28 subdivision if a credit is taken pursuant to subdivision one of this  
29 section.

30 (f) Recapture. (i) With respect to property which is depreciable  
31 pursuant to section one hundred sixty-seven of the internal revenue code  
32 but is not subject to the provisions of section one hundred sixty-eight  
33 of such code and which is disposed of or ceases to be in qualified use  
34 prior to the end of the taxable year in which the credit is to be taken,  
35 the amount of the credit shall be that portion of the credit provided  
36 for in this subdivision which represents the ratio which the months of  
37 qualified use bear to the months of useful life. If property on which  
38 credit has been taken is disposed of or ceases to be in qualified use  
39 prior to the end of its useful life, the difference between the credit  
40 taken and the credit allowed for actual use must be added back in the  
41 year of disposition. Provided, however, if such property is disposed of  
42 or ceases to be in qualified use after it has been in qualified use for  
43 more than twelve consecutive years, it shall not be necessary to add  
44 back the credit as provided in this subparagraph. The amount of credit  
45 allowed for actual use shall be determined by multiplying the original  
46 credit by the ratio which the months of qualified use bear to the months  
47 of useful life. For purposes of this subparagraph, useful life of prop-  
48 erty shall be the same as the taxpayer uses for depreciation purposes  
49 when computing his federal income tax liability.

50 (ii) Except with respect to that property to which subparagraph (iv)  
51 of this paragraph applies, with respect to three-year property, as  
52 defined in subsection (e) of section one hundred sixty-eight of the  
53 internal revenue code, which is disposed of or ceases to be in qualified  
54 use prior to the end of the taxable year in which the credit is to be

1 months of qualified use bear to thirty-six. If property on which credit  
2 has been taken is disposed of or ceases to be in qualified use prior to  
3 the end of thirty-six months, the difference between the credit taken  
4 and the credit allowed for actual use must be added back in the year of  
5 disposition. The amount of credit allowed for actual use shall be deter-  
6 mined by multiplying the original credit by the ratio which the months  
7 of qualified use bear to thirty-six.

8 (iii) Except with respect to that property to which subparagraph (iv)  
9 of this paragraph applies, with respect to property subject to the  
10 provisions of section one hundred sixty-eight of the internal revenue  
11 code other than three-year property as defined in subsection (e) of such  
12 section one hundred sixty-eight which is disposed of or ceases to be in  
13 qualified use prior to the end of the taxable year in which the credit  
14 is to be taken, the amount of the credit shall be that portion of the  
15 credit provided for in this subdivision which represents the ratio which  
16 the months of qualified use bear to sixty. If property on which credit  
17 has been taken is disposed of or ceases to be in qualified use prior to  
18 the end of sixty months, the difference between the credit taken and the  
19 credit allowed for actual use must be added back in the year of disposi-  
20 tion. The amount of credit allowed for actual use shall be determined by  
21 multiplying the original credit by the ratio which the months of quali-  
22 fied use bear to sixty.

23 (iv) With respect to any property to which section one hundred sixty-  
24 eight of the internal revenue code applies, which is a building or a  
25 structural component of a building and which is disposed of or ceases to  
26 be in qualified use prior to the end of the taxable year in which the  
27 credit is to be taken, the amount of the credit shall be that portion of  
28 the credit provided for in this subdivision which represents the ratio  
29 which the months of qualified use bear to the total number of months  
30 over which the taxpayer chooses to deduct the property under the inter-  
31 nal revenue code. If property on which credit has been taken is disposed  
32 of or ceases to be in qualified use prior to the end of the period over  
33 which the taxpayer chooses to deduct the property under the internal  
34 revenue code, the difference between the credit taken and the credit  
35 allowed for actual use must be added back in the year of disposition.  
36 Provided, however, if such property is disposed of or ceases to be in  
37 qualified use after it has been in qualified use for more than twelve  
38 consecutive years, it shall not be necessary to add back the credit as  
39 provided in this subparagraph. The amount of credit allowed for actual  
40 use shall be determined by multiplying the original credit by the ratio  
41 which the months of qualified use bear to the total number of months  
42 over which the taxpayer chooses to deduct the property under the inter-  
43 nal revenue code.

44 (v) For purposes of this paragraph, disposal or cessation of qualified  
45 use shall not be deemed to have occurred solely by reason of the termi-  
46 nation or expiration of an empire zone's designation as such.

47 (vi) (A) For purposes of this paragraph, the decertification of a busi-  
48 ness enterprise with respect to an empire zone shall constitute a  
49 disposal or cessation of qualified use of the property on which the  
50 credit was taken which is located in the zone to which the decertif-  
51 ication applies, on the effective date of such decertification.

52 (B) Where a business enterprise has been decertified based on a find-  
53 ing pursuant to clause one, two, or five of subdivision (a) of section  
54 nine hundred fifty-nine of the general municipal law, the amount  
55 required to be added back by reason of this paragraph shall be (I) the  
56 amount of credit, with respect to the property which is disposed of or

1 ceases to be in qualified use, which was deducted from the taxpayer's

2 tax otherwise due under this article for all prior taxable years,  
3 reduced (but not below zero) by (II) the credit allowed for actual use.  
4 For purposes of this subparagraph, the attribution to specific property  
5 of credit amounts deducted from tax shall be established in accordance  
6 with the date of placement in service of such property in the empire  
7 zone.

8 (C) In no event shall the amount of the credit allowed pursuant to  
9 this subdivision be rendered, solely by reason of clause (A) of this  
10 subparagraph, less than the amount of the credit to which the taxpayer  
11 would otherwise be entitled under subdivision one of this section.

12 (D) Notwithstanding any other provision of this subdivision, in the  
13 case of a business enterprise which has been decertified, any amount of  
14 credit allowed with respect to the property of such business enterprise  
15 located in the zone to which the decertification applies which is  
16 carried over pursuant to paragraph (d) of this subdivision shall not be  
17 carried over beyond the seventh taxable year next following the taxable  
18 year with respect to which the credit provided for in this subdivision  
19 was allowed.

20 (vii) For purposes of this paragraph, where a credit is allowed with  
21 respect to an air pollution control facility on the basis of a certif-  
22 icate of compliance issued pursuant to the environmental conservation  
23 law and the certificate is revoked pursuant to subdivision three of  
24 section 19-0309 of the environmental conservation law, such revocation  
25 shall constitute a disposal or cessation of qualified use, except with  
26 respect to property contained in or comprising such facility which is  
27 described in clause (A), (B), or (C) of subparagraph (v) of paragraph  
28 (b) of this subdivision other than as part of or comprising an air  
29 pollution control facility. Also for purposes of this paragraph, the use  
30 of an air pollution control facility or an industrial waste treatment  
31 facility for the primary purpose of salvaging materials which are usable  
32 in the manufacturing process or are marketable shall constitute a cessa-  
33 tion of qualified use, except with respect to property contained in or  
34 comprising such facility which is described in clause (A) or (C) of  
35 subparagraph (v) of paragraph (b) of this subdivision.

36 (viii) Except as provided in this subparagraph, this paragraph shall  
37 not apply to a credit allowed by this subdivision to a taxpayer that is  
38 a partner in a partnership in the case of manufacturing property;  
39 provided, at the time such property was placed in service by such part-  
40 nership in an empire zone the basis for federal income tax purposes for  
41 such property (or a project that includes such property) equaled or  
42 exceeded three hundred million dollars and such partner owned its part-  
43 nership interest for at least three years from the date such property  
44 was placed in service. If such property ceases to be in qualified use  
45 after it is placed in service, this paragraph shall apply to such part-  
46 ner in the year such property ceases to be in qualifying use.

47 (ix) If a taxpayer, which is approved by the commissioner of economic  
48 development as the owner of a qualified investment project or a signif-  
49 icant capital investment project pursuant to subdivision (w) of section  
50 nine hundred fifty-nine of the general municipal law, fails to (A)  
51 create at least the minimum number of jobs at such project as required  
52 by the provisions of subdivision (s) or (t) of section nine hundred  
53 fifty-seven and subdivision (w) of section nine hundred fifty-nine of  
54 the general municipal law or (B) place in service property comprising  
55 such qualified investment project or significant capital investment  
56 project with a basis for federal income tax purposes equaling or exceed-

1 ing the applicable minimum required basis as provided in such subdivi-  
2 sion (s) or (t), whichever is relevant, by the last day of the fifth  
3 taxable year following the taxable year in which a credit is first  
4 allowed under this subdivision for the property which comprises such  
5 qualified investment project or such significant capital investment  
6 project, the total amount of the credit allowed under this subdivision

7 for all taxable years with respect to the property which comprises such  
8 project which has been refunded to such taxpayer shall be added back in  
9 such taxable year.

10 (g) Notwithstanding the expiration of the empire zones program under  
11 article eighteen-B of the general municipal law, a taxpayer that is  
12 certified as a qualified investment project pursuant to such article  
13 eight-B on the day immediately preceding the day the empire zones  
14 program expired shall continue to be deemed certified under such article  
15 eighteen-B for purposes of this subdivision for the remainder of the  
16 taxable year in which the expiration occurred and for the next succeed-  
17 ing nine taxable years. In addition, the areas designated as empire  
18 zones in which the taxpayer is certified as a qualified investment  
19 project on the day immediately preceding the day the empire zones  
20 program expired shall continue to be deemed empire zones for purposes of  
21 this subdivision for the remainder of the taxable year in which the  
22 expiration occurred and for the next succeeding nine taxable years.

23 (h) Notwithstanding the expiration of the empire zones program under  
24 article eighteen-B of the general municipal law and except as provided  
25 in paragraph (g) of this subdivision, a taxpayer that is certified as an  
26 empire zone business pursuant to such article eighteen-B on the day  
27 immediately preceding the day the empire zone program expired shall  
28 continue to be deemed certified under such article eighteen-B for  
29 purposes of this subdivision until April first, two thousand fourteen.  
30 In addition, the areas designated as empire zones in which the taxpayer  
31 is certified as an empire zone business on the day immediately preceding  
32 the day the empire zones program expired shall continue to be deemed  
33 empire zones for purposes of this subdivisions until April first, two  
34 thousand fourteen.

35 4. Empire zone employment incentive credit (EZ-EIC). (a) Application  
36 of credit. Where a taxpayer is allowed a credit under subdivision three  
37 of this section, the taxpayer shall be allowed a credit for each of the  
38 three years next succeeding the taxable year for which the credit under  
39 such subdivision three is allowed, with respect to such property, wheth-  
40 er or not deductible in such taxable year or in subsequent taxable years  
41 pursuant to paragraph (d) of such subdivision three, of thirty percent  
42 of the credit allowable under such subdivision three; provided, however,  
43 that the credit allowable under this subdivision for any taxable year  
44 shall only be allowed if the average number of employees employed by the  
45 taxpayer in the empire zone, designated pursuant to article eighteen-B  
46 of the general municipal law, in which such property is located during  
47 such taxable year is at least one hundred one percent of the average  
48 number of employees employed by the taxpayer in such empire zone, during  
49 the taxable year immediately preceding the taxable year for which the  
50 credit under such subdivision three is allowed and provided, further,  
51 that if the taxpayer was not subject to tax and did not have a taxable  
52 year immediately preceding the taxable year for which the credit under  
53 subdivision three of this section is allowed, the credit allowable under  
54 this subdivision for any taxable year shall be allowed if the average  
55 number of employees employed in such empire zone in such taxable year is  
56 at least one hundred one percent of the average number of such employees

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1 during the taxable year in which the credit under such subdivision three  
2 is allowed.

3 (b) Average number of employees. The average number of employees  
4 employed in an empire zone in a taxable year shall be computed by ascer-  
5 taining the number of such employees within such zone except general  
6 executive officers, employed by the taxpayer on the thirty-first day of  
7 March, the thirtieth day of June, the thirtieth day of September and the  
8 thirty-first day of December in the taxable year, by adding together the  
9 number of employees ascertained on each of such dates and dividing the  
10 sum so obtained by the number of such above-mentioned dates occurring  
11 within the taxable year.

12 (c) Carryover. In no event shall the credit herein provided for be  
13 allowed in an amount which will reduce the tax payable to less than the  
14 fixed dollar minimum amount prescribed in paragraph (d) of subdivision  
15 one of section two hundred ten of this article. Provided, however, that  
16 if the amount of credit allowable under this subdivision for any taxable  
17 year reduces the tax to such amount or if the taxpayer otherwise pays  
18 tax based on the fixed dollar minimum amount, any amount of credit not  
19 deductible in such taxable year may be carried over to the following  
20 year or years and may be deducted from the taxpayer's tax for such year  
21 or years. In lieu of such carryover, any such taxpayer, which is  
22 approved as the owner of a qualified investment project or a significant  
23 capital investment project pursuant to subdivision (v) of section nine  
24 hundred fifty-nine of the general municipal law, may elect, on its  
25 report for its taxable year with respect to which such credit is  
26 allowed, to treat fifty percent of the amount of such carryover as an  
27 overpayment of tax to be credited or refunded in accordance with the  
28 provisions of section one thousand eighty-six of this chapter. Provided,  
29 however, in the case of such owner of a qualified investment project or  
30 a significant capital investment project, only fifty percent of the  
31 amount of such carryover which is attributable to the credit allowed  
32 under this subdivision with respect to property which is part of such  
33 project shall be allowed to be credited or refunded and such owner shall  
34 be allowed such credit or refund only for those taxable years in which  
35 such owner would be allowed a credit or refund of the empire zone  
36 investment tax credit pursuant to paragraph (d) of subdivision three of  
37 this section. Provided, further, however, the provisions of subsection  
38 (c) of section one thousand eighty-eight of this chapter notwithstanding,  
39 no interest shall be paid thereon.

40 (c-1) Any carryover of a credit from prior taxable years will not be  
41 allowed if an empire zone retention certificate is not issued pursuant  
42 to subdivision (w) of section nine hundred fifty-nine of the general  
43 municipal law to the empire zone enterprise which is the basis of the  
44 credit.

45 (d) Notwithstanding the expiration of the empire zones program under  
46 article eighteen-B of the general municipal law, a taxpayer that is  
47 certified as a qualified investment project pursuant to such article  
48 eighteen-B on the day immediately preceding the day the empire zones  
49 program expired shall continue to be deemed certified under such article  
50 eighteen-B for purposes of this subdivision for the remainder of the  
51 taxable year in which the expiration occurred and for the next succeed-  
52 ing nine taxable years. In addition, the areas designated as empire  
53 zones in which the taxpayer is certified as a qualified investment  
54 project on the day immediately preceding the day the empire zones  
55 program expired shall continue to be deemed empire zones for purposes of

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1 this subdivision for the remainder of the taxable year in which the  
2 expiration occurred and for the next succeeding nine taxable years.

3 (e) Notwithstanding the expiration of the empire zones program under  
4 article eighteen-B of the general municipal law and except as provided  
5 in paragraph (d) of this subdivision, a taxpayer that is certified as an  
6 empire zone business pursuant to such article eighteen-B on the day  
7 immediately preceding the day the empire zones program expired shall  
8 continue to be deemed in the empire zone in which the taxpayer was  
9 certified as an empire zone business on the day immediately preceding  
10 the day the empire zones program expired for each of the three years  
11 next succeeding the taxable year for which the credit under subdivision  
12 three of this section is allowed.

13 5. QEZE credit for real property taxes. (a) Allowance of credit. A  
14 taxpayer which is a qualified empire zone enterprise shall be allowed a  
15 credit for eligible real property taxes, to be computed as provided in  
16 section fifteen of this chapter, against the tax imposed by this arti-  
17 cle.



18 (b) Application of credit. The credit allowed under this subdivision  
19 for any taxable year shall not reduce the tax due for such year to less  
20 than the fixed dollar minimum amount prescribed in paragraph (d) of  
21 subdivision one of section two hundred ten of this article. However, if  
22 the amount of credit allowed under this subdivision for any taxable year  
23 reduces the tax to such amount or if the taxpayer otherwise pays tax  
24 based on the fixed dollar minimum amount, any amount of credit thus not  
25 deductible in such taxable year shall be treated as an overpayment of  
26 tax to be credited or refunded in accordance with the provisions of  
27 section one thousand eighty-six of this chapter. Provided, however, the  
28 provisions of subsection (c) of section one thousand eighty-eight of  
29 this chapter notwithstanding, no interest shall be paid thereon.

30 6. QEZE tax reduction credit. (a) Allowance of credit. A taxpayer  
31 which is a qualified empire zone enterprise shall be allowed a QEZE tax  
32 reduction credit, to be computed as provided in section sixteen of this  
33 chapter, against the tax imposed by this article.

34 (b) Application of credit. The credit allowed under this subdivision  
35 for any taxable year shall not reduce the tax due for such year to less  
36 than the fixed dollar minimum amount prescribed in paragraph (d) of  
37 subdivision one of section two hundred ten of this article. Provided,  
38 however, this paragraph shall not apply to a taxpayer with a zone allo-  
39 cation factor of one hundred percent.

40 7. Qualified emerging technology company employment credit. (a) Appli-  
41 cation of credit. A taxpayer shall be allowed a credit, to be computed  
42 as hereinafter provided, against the tax imposed by this article,  
43 provided:

44 (i) the taxpayer is a qualified emerging technology company pursuant  
45 to the provisions of section thirty-one hundred two-e of the public  
46 authorities law; and

47 (ii) the average number of individuals employed full time by the  
48 taxpayer in New York state during the taxable year is at least one  
49 hundred one percent of the taxpayer's base year employment. For the  
50 purposes of this subdivision, "base year employment" means the average  
51 number of individuals employed full-time by the taxpayer in the state  
52 during the three taxable years immediately preceding the first taxable  
53 year in which the credit is claimed. Where the taxpayer provided full-  
54 time employment within the state during only a portion of such three-  
55 year period, then the first effective date for the company to take  
56 advantage of this credit shall be the next year following the first full

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1 taxable year that the company had full-time employment in New York  
2 state. For the purposes of this paragraph the term "three years" shall  
3 be deemed to refer instead to the prior year's full-time employment  
4 after the first year and the average of the first eight quarters of  
5 employment after the first two taxable years in New York state.

6 (b) Credit limitation. The credit shall be allowed only in the first  
7 taxable year in which the credit is claimed and in each of the next two  
8 taxable years, provided that the conditions of paragraph (a) of this  
9 subdivision are satisfied in each taxable year.

10 (c) Average number of individuals employed full-time. For the purposes  
11 of this subdivision, average number of individuals employed full-time  
12 shall be computed by adding the number of such individuals employed by  
13 the taxpayer at the end of each quarter during each taxable year or  
14 other applicable period and dividing the sum so obtained by the number  
15 of such quarters occurring within such taxable year or other applicable  
16 period; provided however, except that in computing base year employment,  
17 there shall be excluded therefrom any employee with respect to whom a  
18 credit provided for under subdivision six of this section is claimed for  
19 the taxable year.

20 (d) Amount of credit. The amount of the credit shall equal the product  
21 of one thousand dollars times the number of individuals employed full-  
22 time by the taxpayer in the taxable year that are in excess of one



23 hundred percent of the taxpayer's base year employment.

24 (e) Carryover. The credit allowed under this subdivision for any tax-  
25 able year shall not reduce the tax due for such year to less than the  
26 fixed dollar minimum amount prescribed in paragraph (d) of subdivision  
27 one of section two hundred ten of this article. However, if the amount  
28 of credit allowed under this subdivision for any taxable year reduces  
29 the tax to such amount or if the taxpayer otherwise pays tax based on  
30 the fixed dollar minimum amount, any amount of credit thus not deduct-  
31 ible in such taxable year shall be treated as an overpayment of tax to  
32 be credited or refunded in accordance with the provisions of section one  
33 thousand eighty-six of this chapter. Provided, however, the provisions  
34 of subsection (c) of section one thousand eighty-eight of this chapter  
35 notwithstanding, no interest shall be paid thereon.

36 8. Qualified emerging technology company capital tax credit. (a)  
37 Amount of credit. A taxpayer shall be allowed a credit against the tax  
38 imposed by this article. The amount of the credit shall be equal to one  
39 of the following percentages, per each qualified investment in a quali-  
40 fied emerging technology company as defined in section thirty-one  
41 hundred two-e of the public authorities law, made during the taxable  
42 year, and certified by the commissioner, either:

43 (1) ten percent of qualified investments in qualified emerging tech-  
44 nology companies, except for investments made by or on behalf of an  
45 owner of the business, including, but not limited to, a stockholder,  
46 partner or sole proprietor, or any related person, as defined in subpar-  
47 agraph (C) of paragraph three of subsection (b) of section four hundred  
48 sixty-five of the internal revenue code, and provided, however, that the  
49 taxpayer certifies to the commissioner that the qualified investment  
50 will not be sold, transferred, traded, or disposed of during the four  
51 years following the year in which the credit is first claimed; or

52 (2) twenty percent of qualified investments in qualified emerging  
53 technology companies, except for investments made by or on behalf of an  
54 owner of the business, including, but not limited to, a stockholder,  
55 partner or sole proprietor, or any related person, as defined in subpar-  
56 agraph (C) of paragraph three of subsection (b) of section four hundred  
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1 sixty-five of the internal revenue code, and provided, however, that the  
2 taxpayer certifies to the commissioner that the qualified investment  
3 will not be sold, transferred, traded, or disposed of during the nine  
4 years following the year in which the credit is first claimed.

5 (b) Qualified investment. "Qualified investment" means the contrib-  
6 ution of property to a corporation in exchange for original issue capi-  
7 tal stock or other ownership interest, the contribution of property to a  
8 partnership in exchange for an interest in the partnership, and similar  
9 contributions in the case of a business entity not in corporate or part-  
10 nership form in exchange for an ownership interest in such entity. The  
11 total amount of credit allowable to a taxpayer under this provision for  
12 all years, taken in the aggregate, shall not exceed one hundred fifty  
13 thousand dollars in the case of investments made pursuant to subpara-  
14 graph one of paragraph (a) of this subdivision and shall not exceed  
15 three hundred thousand dollars in the case of investments made pursuant  
16 to subparagraph two of paragraph (a) of this subdivision.

17 (c) Carryover. In no event shall the credit and carryover of such  
18 credit allowed under this subdivision for any taxable year, in the  
19 aggregate, reduce the tax due for such year to less than the fixed  
20 dollar minimum amount prescribed in paragraph (d) of subdivision one of  
21 section two hundred ten of this chapter. However, if the amount of cred-  
22 it or carryovers of such credit, or both, allowed under this subdivision  
23 for any taxable year reduces the tax to such amount or if the taxpayer  
24 otherwise pays tax based on the fixed dollar minimum amount, or if any  
25 part of the credit or carryovers of such credit may not be deducted from  
26 the tax otherwise due by reason of the final sentence of this paragraph,  
27 any amount of credit or carryovers of such credit thus not deductible in

28 such taxable year may be carried over to the following year or years and  
29 may be deducted from the tax for such year or years. In addition, the  
30 amount of such credit, and carryovers of such credit to the taxable  
31 year, deducted from the tax otherwise due may not, in the aggregate,  
32 exceed fifty percent of the tax imposed under section two hundred nine  
33 of this article computed without regard to any credit provided for by  
34 this section.

35 (d) Recapture. (1) Where a taxpayer sells, transfers or otherwise  
36 disposes of corporate stock, a partnership interest or other ownership  
37 interest arising from the making of a qualified investment which was the  
38 basis, in whole or in part, for the allowance of the credit provided for  
39 under subparagraph one of paragraph (a) of this subdivision, or where an  
40 investment which was the basis for such allowance is, in whole or in  
41 part, recovered by such taxpayer, and such disposition or recovery  
42 occurs during the taxable year or within forty-eight months from the  
43 close of the taxable year with respect to which such credit is allowed,  
44 the taxpayer shall add back, with respect to the taxable year in which  
45 the disposition or recovery described above occurred, the required  
46 portion of the credit originally allowed.

47 (2) Where a taxpayer sells, transfers or otherwise disposes of corpo-  
48 rate stock, a partnership interest or other ownership interest arising  
49 from the making of a qualified investment which was the basis, in whole  
50 or in part, for the allowance of the credit provided for under subpara-  
51 graph two of paragraph (a) of this subdivision, or where an investment  
52 which was the basis for such allowance is in any manner, in whole or in  
53 part, recovered by such taxpayer, and such disposition or recovery  
54 occurs during the taxable year or within one hundred eight months from  
55 the close of the taxable year with respect to which such credit is  
56 allowed, the taxpayer shall add back, with respect to the taxable year

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1 in which the disposition or recovery described in subparagraph one of  
2 this paragraph occurred the required portion of the credit originally  
3 allowed.

4 (3) The required portion of the credit originally allowed shall be the  
5 product of (A) the portion of such credit attributable to the property  
6 disposed of and (B) the applicable percentage.

7 (4) The applicable percentage shall be:

8 (A) for credits allowed pursuant to subparagraph one of paragraph (a)  
9 of this subdivision:

10 (i) one hundred percent, if the disposition or recovery occurs within  
11 the taxable year with respect to which the credit is allowed or within  
12 twelve months of the end of such taxable year,

13 (ii) seventy-five percent, if the disposition or recovery occurs more  
14 than twelve but not more than twenty-four months after the end of the  
15 taxable year with respect to which the credit is allowed,

16 (iii) fifty percent, if the disposition or recovery occurs more than  
17 twenty-four months but not more than thirty-six months after the end of  
18 the taxable year with respect to which the credit is allowed, or

19 (iv) twenty-five percent, if the disposition or recovery occurs more  
20 than thirty-six months but not more than forty-eight months after the  
21 end of the taxable year with respect to which the credit is allowed; or

22 (B) for credits allowed pursuant to subparagraph two of paragraph (a)  
23 of this subdivision:

24 (i) one hundred percent, if the disposition or recovery occurs within  
25 the taxable year with respect to which the credit is allowed or within  
26 twelve months of the end of such taxable year,

27 (ii) eighty percent, if the disposition or recovery occurs more than  
28 twelve but not more than forty-eight months after the end of the taxable  
29 year with respect to which the credit is allowed,

30 (iii) sixty percent, if the disposition or recovery occurs more than  
31 forty-eight months but not more than seventy-two months after the end of  
32 the taxable year with respect to which the credit is allowed,

33 (iv) forty percent, if the disposition or recovery occurs more than  
34 seventy-two months but not more than ninety-six months after the end of  
35 the taxable year with respect to which the credit is allowed, or

36 (v) twenty percent, if the disposition or recovery occurs more than  
37 ninety-six months but not more than one hundred eight months after the  
38 end of the taxable year with respect to which the credit is allowed.

39 9. Credit for the special additional mortgage recording tax. (a)  
40 Application of credit. A taxpayer shall be allowed a credit, to be cred-  
41 ited against the tax imposed by this article, equal to the amount of the  
42 special additional mortgage recording tax paid by the taxpayer pursuant  
43 to the provisions of subdivision one-a of section two hundred fifty-  
44 three of this chapter or mortgages recorded. Provided, however, no cred-  
45 it shall be allowed with respect to a mortgage of real property princi-  
46 ally improved or to be improved by one or more structures containing in  
47 the aggregate not more than six residential dwelling units, each dwell-  
48 ing unit having its own separate cooking facilities, where the real  
49 property is located in one or more of the counties comprising the metro-  
50 politan commuter transportation area. Provided further, however, no  
51 credit shall be allowed with respect to a mortgage of real property  
52 principally improved or to be improved by one or more structures  
53 containing in the aggregate not more than six residential dwelling  
54 units, each dwelling unit having its own separate cooking facilities,  
55 where the real property is located in the county of Erie.

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1 (b) Carryover. In no event shall the credit herein provided for be  
2 allowed in an amount which will reduce the tax payable to less than the  
3 fixed dollar minimum amount prescribed in paragraph (d) of subdivision  
4 one of section two hundred ten of this article. If, however, the amount  
5 of credit allowable under this subdivision for any taxable year, includ-  
6 ing any credit carried over from a prior taxable year, reduces the tax  
7 to such amount or if the taxpayer otherwise pays tax based on the fixed  
8 dollar minimum amount, any amount of credit not deductible in such taxa-  
9 ble year may be carried over to the following year or years and may be  
10 deducted from the taxpayer's tax for such year or years.

11 10. Credit for servicing certain mortgages. (a) General. Every taxpay-  
12 er meeting the requirements of the state of New York mortgage agency  
13 applicable to the servicing of mortgages acquired by such agency pursu-  
14 ant to the state of New York mortgage agency act, which shall have  
15 entered into a contract with the state of New York mortgage agency to  
16 service mortgages acquired by such agency pursuant to the state of New  
17 York mortgage agency act, shall have credited to it annually an amount  
18 equal to two and ninety-three one hundredths per centum of the total  
19 principal and interest collected by the taxpayer during its taxable year  
20 on each such mortgage secured by a lien on real estate improved by a  
21 one-family to four-family residential structure and an amount equal to  
22 the interest collected by the taxpayer during its taxable year on each  
23 such mortgage secured by a lien on real property improved by a structure  
24 occupied as the residence of five or more families living independently  
25 of each other, multiplied by a fraction the denominator of which shall  
26 be the interest rate payable on the mortgage (computed to five decimal  
27 places) and the numerator of which shall be .00125 in the case of such a  
28 mortgage acquired by such agency for less than one million dollars, and  
29 .00100 in the case of such a mortgage acquired by such agency for one  
30 million dollars or more. In no event shall the credit allowed under this  
31 subdivision reduce the tax to less than the fixed dollar minimum amount  
32 prescribed in paragraph (d) of subdivision one of section two hundred  
33 ten of this article. In computing such tax credit for the servicing of  
34 mortgages on one-family to four-family residential structures, the  
35 taxpayer shall not be entitled to credit for the collection of curtail-  
36 ment or payments in discharge of any such mortgage. For the purposes of  
37 this subdivision,

38 (b) (i) a "curtailment" shall mean amounts paid by mortgagors

39 (A) in excess of the monthly constant due during the month of  
40 collection and

41 (B) in reduction of the unpaid principal balance of the mortgage; in  
42 the absence of clear evidence to the contrary, amounts paid in excess of  
43 the monthly constant due during the month of collection shall be deemed  
44 to be in reduction of the unpaid principal balance of the mortgage; and

45 (ii) "monthly constant" shall mean the amount of principal and inter-  
46 est which is due and payable according to the mortgage documents on each  
47 periodic payment date.

48 11. Agricultural property tax credit. (a) General. In the case of a  
49 taxpayer which is an eligible farmer or an eligible farmer who has paid  
50 taxes pursuant to a land contract, there shall be allowed a credit for  
51 the allowable school district property taxes. The term "allowable school  
52 district property taxes" means the school district property taxes paid  
53 during the taxable year on qualified agricultural property, subject to  
54 the acreage limitation provided in paragraph (e) of this subdivision and  
55 the income limitation provided in paragraph (f) of this subdivision.

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1 (b) Eligible farmer. For purposes of this subdivision, the term  
2 "eligible farmer" means a taxpayer whose federal gross income from farm-  
3 ing for the taxable year is at least two-thirds of excess federal gross  
4 income. The term "eligible farmer" also includes a corporation other  
5 than the taxpayer of record for qualified agricultural land which has  
6 paid the school district property taxes on such land pursuant to a  
7 contract for the future purchase of such land; provided that such corpo-  
8 ration has a federal gross income from farming for the taxable year  
9 which is at least two-thirds of excess federal gross income; and  
10 provided further that, in determining such income eligibility, a taxpay-  
11 er may, for any taxable year, use the average of such federal gross  
12 income from farming for that taxable year and such income for the two  
13 consecutive taxable years immediately preceding such taxable year.  
14 Excess federal gross income means the amount of federal gross income  
15 from all sources for the taxable year in excess of thirty thousand  
16 dollars. For the purposes of this paragraph, payments from the state's  
17 farmland protection program, administered by the department of agricul-  
18 ture and markets, shall be included as federal gross income from farming  
19 for otherwise eligible farmers.

20 (c) School district property taxes. For purposes of this subdivision,  
21 the term "school district property taxes" means all property taxes,  
22 special ad valorem levies and special assessments, exclusive of penal-  
23 ties and interest, levied for school district purposes on the qualified  
24 agricultural property owned by the taxpayer.

25 (d) Qualified agricultural property. For purposes of this subdivision,  
26 the term "qualified agricultural property" means land located in this  
27 state which is used in agricultural production, and land improvements,  
28 structures and buildings (excluding buildings used for the taxpayer's  
29 residential purpose) located on such land which are used or occupied to  
30 carry out such production. Qualified agricultural property also includes  
31 land set aside or retired under a federal supply management or soil  
32 conservation program or land that at the time it becomes subject to a  
33 conservation easement met the requirements under this paragraph.

34 (e) Acreage limitation. (i) Eligible taxes. In the event that the  
35 qualified agricultural property owned by the taxpayer includes land in  
36 excess of the base acreage as provided in this paragraph, the amount of  
37 school district property taxes eligible for credit under this subdivi-  
38 sion shall be that portion of the school district property taxes which  
39 bears the same ratio to the total school district property taxes paid  
40 during the taxable year, as the acreage allowable under this paragraph  
41 bears to the entire acreage of such land.

42 (ii) Allowable acreage. The allowable acreage is the sum of the base  
43 acreage set forth below and fifty percent of the incremental acreage.  
44 The incremental acreage is the excess of the entire acreage of qualified

45 agricultural land owned by the taxpayer over the base acreage. Except as  
46 provided in subparagraph (iii) of this paragraph, the base acreage is  
47 three hundred fifty acres.

48 The total base acreage may be increased by any acreage enrolled or  
49 participating during the taxable year in a federal environmental conser-  
50 vation acreage reserve program pursuant to title three of the federal  
51 agriculture improvement and reform act of nineteen hundred ninety-six.

52 (iii) Base acreage of related persons. Where the taxpayer and one or  
53 more related persons each own qualified agricultural property on the  
54 first day of March of any year, the base acreage under subparagraph (ii)  
55 of this paragraph shall be divided equally and allotted among the  
56 taxpayer and such related persons, and the taxpayer's base acreage for

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1 the taxable year which includes such March first shall be limited to its  
2 allotted share. Provided, however, if the taxpayer and all such related  
3 persons consent (at such time and in such manner as the commissioner may  
4 prescribe) to an unequal division, the taxpayer's base acreage for such  
5 taxable year shall be limited to its allotted share under such unequal  
6 division.

7 (iv) Related persons. (A) For purposes of subparagraph (iii) of this  
8 paragraph, the term "related person" means:

9 (I) a corporation subject to tax under this article, where the taxpay-  
10 er and the corporation are members of the same controlled group, as  
11 defined in section 267(f) of the internal revenue code;

12 (II) an individual, partnership, estate or trust, where more than  
13 fifty percent in value of the outstanding stock of the taxpayer is  
14 owned, directly or indirectly, by or for such individual, partnership,  
15 estate or trust or by or for the grantor of such trust;

16 (III) a corporation subject to tax under this article, or a partner-  
17 ship, estate or trust, if the same person owns more than fifty percent  
18 in value of the outstanding stock of the taxpayer and more than fifty  
19 percent in value of the outstanding stock of the corporation, or more  
20 than fifty percent of the capital or profits interest in the partner-  
21 ship, or more than fifty percent of the beneficial interest in the  
22 estate or trust;

23 (IV) a partnership, estate or trust of which the taxpayer owns,  
24 directly or indirectly, more than fifty percent of the capital, profits  
25 or beneficial interest.

26 (B) In determining whether a person is a related person within the  
27 meaning of this subparagraph:

28 (I) stock owned, directly or indirectly, by or for a corporation,  
29 partnership, estate or trust shall be considered as being owned propor-  
30 tionately by or for its shareholders, partners or beneficiaries;

31 (II) an individual shall be considered as owning the stock owned,  
32 directly or indirectly, by or for his spouse;

33 (III) stock constructively owned by a person by reason of the applica-  
34 tion of item (I) of this clause shall, for the purpose of applying item  
35 (I) or (II) of this clause, be treated as actually owned by such person.

36 (f) Income limitation. (i) In the event that the modified entire net  
37 income of the taxpayer exceeds two hundred thousand dollars, the allow-  
38 able school district property taxes under paragraph (a) of this subdivi-  
39 sion shall be the eligible taxes under subparagraph (i) of paragraph (e)  
40 of this subdivision reduced by the product of the amount of such eligi-  
41 ble taxes and a percentage, such percentage to be determined by multi-  
42 plying one hundred percent by a fraction, the numerator of which is the  
43 lesser of one hundred thousand dollars or the excess of the taxpayer's  
44 modified entire net income over two hundred thousand dollars and the  
45 denominator of which is one hundred thousand dollars. For purposes of  
46 the preceding sentence, the term "eligible taxes", where the acreage  
47 limitation of paragraph (e) of this subdivision does not apply, shall  
48 mean the total school district property taxes paid during the taxable  
49 year.

50 (ii) The term "modified entire net income" means the entire net income  
51 for the taxable year reduced by the amount of principal paid on farm  
52 indebtedness during the taxable year. The term "farm indebtedness" means  
53 debt incurred or refinanced which is secured by farm property, where the  
54 proceeds of the debt are disbursed for expenditures incurred in the  
55 business of farming.

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1 (g) Carryover. In no event shall the credit provided herein be allowed  
2 in an amount which will reduce the tax payable to less than the fixed  
3 dollar minimum amount prescribed in paragraph (d) of subdivision one of  
4 section two hundred ten of this article. If, however, the amount of  
5 credit allowable under this subdivision for any taxable year reduces the  
6 tax to such amount or if the taxpayer otherwise pays tax based on the  
7 fixed dollar minimum amount, any amount of credit not deductible in such  
8 taxable year may be carried over to the following year or years and may  
9 be deducted from the taxpayer's tax for such year or years. Provided,  
10 however, in lieu of carrying over the unused portion of such credit, the  
11 taxpayer may elect to treat such unused portion as an overpayment of tax  
12 to be credited or refunded in accordance with the provisions of section  
13 one thousand eighty-six of this chapter except that no interest shall be  
14 paid on such overpayment.

15 (h) Nonqualified use. (i) No credit in conversion year. In the event  
16 that qualified agricultural property is converted by the taxpayer to  
17 nonqualified use, credit under this subdivision shall not be allowed  
18 with respect to such property for the taxable year of conversion (the  
19 conversion year).

20 (ii) Credit recapture. If the conversion by the taxpayer of qualified  
21 agricultural property to nonqualified use occurs during the period of  
22 the two taxable years following the taxable year for which the credit  
23 under this subdivision was first claimed with respect to such property,  
24 the credit allowed with respect to such property for the taxable years  
25 prior to the conversion year must be added back in the conversion year.  
26 Where the property converted includes land, and where the conversion is  
27 of only a portion of such land, the credit allowed with respect to the  
28 property converted shall be determined by multiplying the entire credit  
29 under this subdivision for the taxable years prior to the conversion  
30 year by a fraction, the numerator of which is the acreage converted and  
31 the denominator of which is the entire acreage of such land owned by the  
32 taxpayer immediately prior to the conversion.

33 (iii) Exception to recapture. Subparagraph (ii) of this paragraph  
34 shall not apply to the conversion of property where the conversion is by  
35 reason of involuntary conversion, within the meaning of section one  
36 thousand thirty-three of the internal revenue code.

37 (iv) Conversion to nonqualified use. For purposes of this paragraph, a  
38 sale or other disposition of qualified agricultural property alone shall  
39 not constitute a conversion to a nonqualified use.

40 (i) Special rules. For purposes of this subdivision, the term "federal  
41 gross income from farming" shall include gross income from the  
42 production of maple syrup, cider, Christmas trees derived from a managed  
43 Christmas tree operation whether dug for transplanting or cut from the  
44 stump, or from a commercial horse boarding operation as defined in  
45 subdivision thirteen of section three hundred one of the agriculture and  
46 markets law, or from the sale of wine from a licensed farm winery as  
47 provided for in article six of the alcoholic beverage control law, or  
48 from the sale of cider from a licensed farm cidery as provided for in  
49 section fifty-eight-c of the alcoholic beverage control law.

50 (j) Election to deem gross income of New York C corporation to share-  
51 holders. For purposes of this subdivision, federal gross income from  
52 farming shall be zero for any taxable year of a New York C corporation  
53 for which the election under paragraph nine of subsection (n) of section  
54 six hundred six of this chapter is in effect.

55 12. Credit for employment of persons with disabilities. (a) Allowance



1 inafter provided, against the tax imposed by this article, for employing  
2 within the state a qualified employee.

3 (b) Qualified employee. A qualified employee is an individual:

4 (1) who is certified by the education department, or in the case of an  
5 individual who is blind or visually handicapped, by the state agency  
6 responsible for provision of vocational rehabilitation services to the  
7 blind and visually handicapped: (i) as a person with a disability which  
8 constitutes or results in a substantial handicap to employment and (ii)  
9 as having completed or as receiving services under an individualized  
10 written rehabilitation plan approved by the education department or  
11 other state agency responsible for providing vocational rehabilitation  
12 services to such individual; and

13 (2) who has worked on a full-time basis for the employer who is claim-  
14 ing the credit for at least one hundred eighty days or four hundred  
15 hours.

16 (c) Amount of credit. Except as provided in paragraph (d) of this  
17 subdivision, the amount of credit shall be thirty-five percent of the  
18 first six thousand dollars in qualified first-year wages earned by each  
19 qualified employee. "Qualified first-year wages" means wages paid or  
20 incurred by the taxpayer during the taxable year to qualified employees  
21 which are attributable, with respect to any such employee, to services  
22 rendered during the one-year period beginning with the day the employee  
23 begins work for the taxpayer.

24 (d) Credit where federal work opportunity tax credit applies. With  
25 respect to any qualified employee whose qualified first-year wages under  
26 paragraph (c) of this subdivision also constitute qualified first-year  
27 wages for purposes of the work opportunity tax credit for vocational  
28 rehabilitation referrals under section fifty-one of the internal revenue  
29 code, the amount of credit under this subdivision shall be thirty-five  
30 percent of the first six thousand dollars in qualified second-year wages  
31 earned by each such employee. "Qualified second-year wages" means wages  
32 paid or incurred by the taxpayer during the taxable year to qualified  
33 employees which are attributable, with respect to any such employee, to  
34 services rendered during the one-year period beginning one year after  
35 the employee begins work for the taxpayer.

36 (e) Carryover. The credit allowed under this subdivision for any taxa-  
37 ble year shall not reduce the tax due for such year to less than the  
38 fixed dollar minimum amount prescribed in paragraph (d) of subdivision  
39 one of section two hundred ten of this chapter. However, if the amount  
40 of credit allowable under this subdivision for any taxable year reduces  
41 the tax to such amount or if the taxpayer otherwise pays tax based on  
42 the fixed dollar minimum amount, any amount of credit not deductible in  
43 such taxable year may be carried over to the following year or years,  
44 and may be deducted from the taxpayer's tax for such year or years.

45 (f) Coordination with federal work opportunity tax credit. The  
46 provisions of section fifty-one and fifty-two of the internal revenue  
47 code, as such sections applied on October first, nineteen hundred nine-  
48 ty-six, that apply to the federal work opportunity tax credit for voca-  
49 tional rehabilitation referrals shall apply to the credit under this  
50 subdivision to the extent that such sections are consistent with the  
51 specific provisions of this subdivision, provided that in the event of a  
52 conflict the provisions of this subdivision shall control.

53 13. Credit for purchase of an automated external defibrillator. A  
54 taxpayer shall be allowed a credit, to be computed as hereinafter  
55 provided, against the tax imposed by this article, for the purchase,  
56 other than for resale, of an automated external defibrillator, as such

1 term is defined in section three thousand-b of the public health law.  
2 The amount of credit shall be the cost to the taxpayer of automated



3 external defibrillators purchased during the taxable year, such credit  
4 not to exceed five hundred dollars with respect to each unit purchased.  
5 The credit allowed under this subdivision for any taxable year shall not  
6 reduce the tax due for such year to less than the fixed dollar minimum  
7 amount prescribed in paragraph (d) of subdivision one of section two  
8 hundred ten of this chapter.

9 14. Credit for purchase of long-term care insurance. (a) General. A  
10 taxpayer shall be allowed a credit against the tax imposed by this arti-  
11 cle equal to twenty percent of the premium paid during the taxable year  
12 for long-term care insurance. In order to qualify for such credit, the  
13 taxpayer's premium payment must be for the purchase of or for continuing  
14 coverage under a long-term care insurance policy that qualifies for such  
15 credit pursuant to section one thousand one hundred seventeen of the  
16 insurance law.

17 (b) Carryover. The credit allowed under this subdivision for any year  
18 shall not reduce the tax due for such year to less than the fixed dollar  
19 minimum amount prescribed in paragraph (d) of subdivision one of section  
20 two hundred ten of this article. If, however, the amount of credit  
21 allowable under this subdivision for any taxable year reduces the tax to  
22 such amount or if the taxpayer otherwise pays tax based on the fixed  
23 dollar minimum amount, any amount of credit not deductible in such taxa-  
24 ble year may be carried over to the following year or years and may be  
25 deducted from the taxpayer's tax for such year or years.

26 15. Low-income housing credit. (a) Allowance of credit. A taxpayer  
27 shall be allowed a credit against the tax imposed by this article with  
28 respect to the ownership of eligible low-income buildings, computed as  
29 provided in section eighteen of this chapter.

30 (b) Application of credit. The credit and carryovers of such credit  
31 allowed under this subdivision for any taxable year shall not, in the  
32 aggregate, reduce the tax due for such year to less than the fixed  
33 dollar minimum amount prescribed in paragraph (d) of subdivision one of  
34 section two hundred ten of this article. However, if the amount of cred-  
35 it or carryovers of such credit, or both, allowed under this subdivision  
36 for any taxable year reduces the tax to such amount or if the taxpayer  
37 otherwise pays tax based on the fixed dollar minimum amount, any amount  
38 of credit or carryovers of such credit thus not deductible in such taxa-  
39 ble year may be carried over to the following year or years and may be  
40 deducted from the tax for such year or years.

41 (c) Credit recapture. For provisions requiring recapture of credit,  
42 see subdivision (b) of section eighteen of this chapter.

43 16. Green building credit. (a) Allowance of credit. A taxpayer shall  
44 be allowed a credit, to be computed as provided in section nineteen of  
45 this chapter, against the tax imposed by this article.

46 (b) Carryovers. The credit and carryovers of such credit allowed under  
47 this subdivision for any taxable year shall not, in the aggregate,  
48 reduce the tax due for such year to less than the fixed dollar minimum  
49 amount prescribed in paragraph (d) of subdivision one of section two  
50 hundred ten of this article. However, if the amount of credit or carry-  
51 overs of such credit, or both, allowed under this subdivision for any  
52 taxable year reduces the tax to such amount or if the taxpayer otherwise  
53 pays tax based on the fixed dollar minimum amount, any amount of credit  
54 or carryovers of such credit thus not deductible in such taxable year  
55 may be carried over to the following year or years and may be deducted  
56 from the tax for such year or years.

1 17. Brownfield redevelopment tax credit. (a) Allowance of credit. A  
2 taxpayer shall be allowed a credit, to be computed as provided in  
3 section twenty-one of this chapter, against the tax imposed by this  
4 article.

5 (b) Application of credit. The credit allowed under this subdivision  
6 for any taxable year shall not reduce the tax due for such year to less  
7 than the fixed dollar minimum amount prescribed in paragraph (d) of

8 subdivision one of section two hundred ten of this article. However, if  
9 the amount of credits allowed under this subdivision for any taxable  
10 year reduces the tax to such amount or if the taxpayer otherwise pays  
11 tax based on the fixed dollar minimum amount, any amount of credit thus  
12 not deductible in such taxable year shall be treated as an overpayment  
13 of tax to be credited or refunded in accordance with the provisions of  
14 section one thousand eighty-six of this chapter. Provided, however, the  
15 provisions of subsection (c) of section one thousand eighty-eight of  
16 this chapter notwithstanding, no interest shall be paid thereon.

17 18. Remediated brownfield credit for real property taxes for qualified  
18 sites. (a) Allowance of credit. A taxpayer which is a developer of a  
19 qualified site shall be allowed a credit for eligible real property  
20 taxes, to be computed as provided in subdivision (b) of section twenty-  
21 two of this chapter, against the tax imposed by this article. For  
22 purposes of this subdivision, the terms "qualified site" and "developer"  
23 shall have the same meaning as set forth in paragraphs two and three,  
24 respectively, of subdivision (a) of section twenty-two of this chapter.

25 (b) Application of credit. The credit allowed under this subdivision  
26 for any taxable year shall not reduce the tax due for such year to less  
27 than the fixed dollar minimum amount prescribed in paragraph (d) of  
28 subdivision one of section two hundred ten of this article. However, if  
29 the amount of credit allowed under this subdivision for any taxable year  
30 reduces the tax to such amount or if the taxpayer otherwise pays tax  
31 based on the fixed dollar minimum amount, any amount of credit thus not  
32 deductible in such taxable year shall be treated as an overpayment of  
33 tax to be credited or refunded in accordance with the provisions of  
34 section one thousand eighty-six of this chapter. Provided, however, the  
35 provisions of subsection (c) of section one thousand eighty-eight of  
36 this chapter notwithstanding, no interest shall be paid thereon.

37 19. Environmental remediation insurance credit. (a) Allowance of cred-  
38 it. A taxpayer shall be allowed a credit, to be computed as provided in  
39 section twenty-three of this chapter, against the tax imposed by this  
40 article.

41 (b) Application of credit. The credit allowed under this subdivision  
42 for any taxable year shall not reduce the tax due for such year to less  
43 than the fixed dollar minimum amount prescribed in paragraph (d) of  
44 subdivision one of section two hundred ten of this article. However, if  
45 the amount of credits allowed under this subdivision for any taxable  
46 year reduces the tax to such amount or if the taxpayer otherwise pays  
47 tax based on the fixed dollar minimum amount, any amount of credit thus  
48 not deductible in such taxable year shall be treated as an overpayment  
49 of tax to be credited or refunded in accordance with the provisions of  
50 section one thousand eighty-six of this chapter. Provided, however, the  
51 provisions of subsection (c) of section one thousand eighty-eight of  
52 this chapter notwithstanding, no interest shall be paid thereon.

53 20. Empire state film production credit. (a) Allowance of credit. A  
54 taxpayer who is eligible pursuant to section twenty-four of this chapter  
55 shall be allowed a credit to be computed as provided in such section  
56 twenty-four against the tax imposed by this article.

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1 (b) Application of credit. The credit allowed under this subdivision  
2 for any taxable year shall not reduce the tax due for such year to less  
3 than the fixed dollar minimum amount prescribed in paragraph (d) of  
4 subdivision one of section two hundred ten of this article. Provided,  
5 however, that if the amount of the credit allowable under this subdivi-  
6 sion for any taxable year reduces the tax to such amount or if the  
7 taxpayer otherwise pays tax based on the fixed dollar minimum amount,  
8 the excess shall be treated as an overpayment of tax to be credited or  
9 refunded in accordance with the provisions of section one thousand  
10 eighty-six of this chapter. Provided, however, the provisions of  
11 subsection (c) of section one thousand eighty-eight of this chapter  
12 notwithstanding, no interest shall be paid thereon.

13 21. Security training tax credit. (a) Allowance of credit. A taxpayer  
14 shall be allowed a credit, to be computed as provided in section twenty-  
15 six of this chapter, against the tax imposed by this article.

16 (b) Application of credit. The credit allowed under this subdivision  
17 for any taxable year shall not reduce the tax due for such year to less  
18 than the fixed dollar minimum amount prescribed in paragraph (d) of  
19 subdivision one of section two hundred ten of this chapter. However, if  
20 the amount of credits allowed under this subdivision for any taxable  
21 year reduces the tax to such amount or if the taxpayer otherwise pays  
22 tax based on the fixed dollar minimum amount, any amount of credit thus  
23 not deductible in such taxable year shall be treated as an overpayment  
24 of tax to be credited or refunded in accordance with the provisions of  
25 section one thousand eighty-six of this chapter. Provided, however, the  
26 provisions of subsection (c) of section one thousand eighty-eight of  
27 this chapter notwithstanding, no interest shall be paid thereon.

28 22. Conservation easement tax credit. (a) Credit allowed. In the case  
29 of a taxpayer who owns land that is subject to a conservation easement  
30 held by a public or private conservation agency, there shall be allowed  
31 a credit for twenty-five percent of the allowable school district, county  
32 and town real property taxes on such land. In no such case shall the  
33 credit allowed under this subdivision in combination with any other  
34 credit for such school district, county and town real property taxes  
35 under this section exceed such taxes.

36 (b) Conservation easement. For purposes of this subdivision, the term  
37 "conservation easement" means a perpetual and permanent conservation  
38 easement as defined in article forty-nine of the environmental conserva-  
39 tion law that serves to protect open space, scenic, natural resources,  
40 biodiversity, agricultural, watershed and/or historic preservation  
41 resources. Any conservation easement for which a tax credit is claimed  
42 under this subdivision shall be filed with the department of environ-  
43 mental conservation, as provided for in article forty-nine of the envi-  
44 ronmental conservation law and such conservation easement shall comply  
45 with the provisions of title three of such article, and the provisions  
46 of subdivision (h) of section 170 of the internal revenue code. Dedi-  
47 cations of land for open space through the execution of conservation  
48 easements for the purpose of fulfilling density requirements to obtain  
49 subdivision or building permits shall not be considered a conservation  
50 easement under this subdivision.

51 (c) Land. For purposes of this subdivision, the term "land" means a  
52 fee simple title to real property located in this state, with or without  
53 improvements thereon; rights of way; water and riparian rights; ease-  
54 ments; privileges and all other rights or interests of any land or  
55 description in, relating to or connected with real property, excluding  
56 buildings, structures, or improvements.

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1 (d) Public or private conservation agency. For purposes of this subdi-  
2 vision, the term "public or private conservation agency" means any  
3 state, local, or federal governmental body; or any private not-for-pro-  
4 fit charitable corporation or trust which is authorized to do business  
5 in the state of New York, is organized and operated to protect land for  
6 natural resources, conservation or historic preservation purposes, is  
7 exempt from federal income taxation under section 501(c)(3) of the  
8 internal revenue code, and has the power to acquire, hold and maintain  
9 land and/or interests in land for such purposes.

10 (e) Credit limitation. The amount of the credit that may be claimed by  
11 a taxpayer pursuant to this subsection shall not exceed five thousand  
12 dollars in any given year.

13 (f) Application of the credit. The credit allowed under this subdivi-  
14 sion for any taxable year shall not reduce the tax due for such year to  
15 less than the fixed dollar minimum amount prescribed in paragraph (d) of  
16 subdivision one of section two hundred ten of this article. However, if  
17 the amount of the credit allowed under this subdivision for any taxable

18 year reduces the tax to such amount or if the taxpayer otherwise pays  
19 tax based on the fixed dollar minimum amount, any amount of the credit  
20 thus not deductible in such taxable year shall be treated as an overpay-  
21 ment of tax to be credited or refunded in accordance with the provisions  
22 of subsection (c) of section one thousand eighty-eight of this chapter,  
23 except that, no interest shall be paid thereon.

24 23. Empire state commercial production credit. (a) Allowance of cred-  
25 it. A taxpayer that is eligible pursuant to provisions of section twen-  
26 ty-eight of this chapter shall be allowed a credit to be computed as  
27 provided in such section against the tax imposed by this article.

28 (b) Application of credit. The credit allowed under this subdivision  
29 for any taxable year shall not reduce the tax due for such year to less  
30 than the fixed dollar minimum amount prescribed in paragraph (d) of  
31 subdivision one of section two hundred ten of this article. Provided,  
32 however, that if the amount of the credit allowable under this subdivi-  
33 sion for any taxable year reduces the tax to such amount or if the  
34 taxpayer otherwise pays tax based on the fixed dollar minimum amount,  
35 fifty percent of the excess shall be treated as an overpayment of tax to  
36 be credited or refunded in accordance with the provisions of section one  
37 thousand eighty-six of this chapter. Provided, however, the provisions  
38 of subsection (c) of section one thousand eighty-eight of this chapter  
39 notwithstanding, no interest shall be paid thereon. The balance of such  
40 credit not credited or refunded in such taxable year may be carried over  
41 to the immediately succeeding taxable year and may be deducted from the  
42 taxpayer's tax for such year. The excess, if any, of the amount of cred-  
43 it over the tax for such succeeding year shall be treated as an overpay-  
44 ment of tax to be credited or refunded in accordance with the provisions  
45 of section one thousand eighty-six of this chapter. Provided, however,  
46 the provisions of subsection (c) of section one thousand eighty-eight of  
47 this chapter notwithstanding, no interest shall be paid thereon.

48 (c) Expiration of credit. The credit allowed under this subdivision  
49 shall not be applicable to taxable years beginning on or after December  
50 thirty-first, two thousand seventeen.

51 24. Biofuel production credit. (a) General. A taxpayer shall be  
52 allowed a credit, to be computed as provided in section twenty-eight of  
53 this chapter added as part X of chapter sixty-two of the laws of two  
54 thousand six, against the tax imposed by this article. The credit  
55 allowed under this subdivision for any taxable year shall not reduce the  
56 tax due for such year to less than the fixed dollar minimum amount

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1 prescribed in paragraph (d) of subdivision one of section two hundred  
2 ten of this article. However, if the amount of credit allowed under  
3 this subdivision for any taxable year reduces the tax to such amount or  
4 if the taxpayer otherwise pays tax based on the fixed dollar minimum  
5 amount, any amount of credit thus not deductible in such taxable year  
6 shall be treated as an overpayment of tax to be credited or refunded in  
7 accordance with the provisions of section one thousand eighty-six of  
8 this chapter. Provided, however, the provisions of subsection (c) of  
9 section one thousand eighty-eight of this chapter notwithstanding, no  
10 interest shall be paid thereon. The tax credit allowed pursuant to this  
11 section shall apply to taxable years beginning before January first, two  
12 thousand twenty.

13 25. Clean heating fuel credit. (a) General. A taxpayer shall be  
14 allowed a credit against the tax imposed by this article. Such credit,  
15 to be computed as hereinafter provided, shall be allowed for bioheat,  
16 used for space heating or hot water production for residential purposes  
17 within this state purchased before January first, two thousand seven-  
18 teen. Such credit shall be \$0.01 per percent of biodiesel per gallon of  
19 bioheat, not to exceed twenty cents per gallon, purchased by such  
20 taxpayer.

21 (b) Definitions. For purposes of this subdivision, the following defi-  
22 nitions shall apply:

23 (i) "Biodiesel" shall mean a fuel comprised exclusively of mono-alkyl  
24 esters of long chain fatty acids derived from vegetable oils or animal  
25 fats, designated B100, which meets the specifications of American Socie-  
26 ty of Testing and Materials designation D 6751.

27 (ii) "Bioheat" shall mean a fuel comprised of biodiesel blended with  
28 conventional home heating oil, which meets the specifications of the  
29 American Society of Testing and Materials designation D 396 or D 975.

30 (c) Application of credit. The credit allowed under this subdivision  
31 for any taxable year shall not reduce the tax due for such year to less  
32 than the fixed dollar minimum amount prescribed in paragraph (d) of  
33 subdivision one of section two hundred ten of this article. However, if  
34 the amount of credit allowed under this subdivision for any taxable year  
35 reduces the tax to such amount or if the taxpayer otherwise pays tax  
36 based on the fixed dollar minimum amount, any amount of credit thus not  
37 deductible in such taxable year shall be treated as an overpayment of  
38 tax to be credited or refunded in accordance with the provisions of  
39 section one thousand eighty-six of this chapter. Provided, however, the  
40 provisions of subsection (c) of section one thousand eighty-eight of  
41 this chapter notwithstanding, no interest shall be paid thereon.

42 26. Credit for rehabilitation of historic properties. (a) Application  
43 of credit. (i) For taxable years beginning on or after January first,  
44 two thousand ten, and before January first, two thousand twenty, a  
45 taxpayer shall be allowed a credit as hereinafter provided, against the  
46 tax imposed by this article, in an amount equal to one hundred percent  
47 of the amount of credit allowed the taxpayer for the same taxable year  
48 with respect to a certified historic structure under subsection (c) (2)  
49 of section 47 of the internal revenue code with respect to a certified  
50 historic structure located within the state. Provided, however, the  
51 credit shall not exceed five million dollars.

52 (ii) For taxable years beginning on or after January first, two thou-  
53 sand twenty, a taxpayer shall be allowed a credit as hereinafter  
54 provided, against the tax imposed by this article, in an amount equal to  
55 thirty percent of the amount of credit allowed the taxpayer for the same  
56 taxable year with respect to a certified historic structure under  
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1 subsection (c) (3) of section 47 of the internal revenue code with  
2 respect to a certified historic structure located within the state.  
3 Provided, however, the credit shall not exceed one hundred thousand  
4 dollars.

5 (B) If the taxpayer is a partner in a partnership or a shareholder in  
6 a New York S corporation, then the credit caps imposed in subparagraph  
7 (A) of this paragraph shall be applied at the entity level, so that the  
8 aggregate credit allowed to all the partners or shareholders of each  
9 such entity in the taxable year does not exceed the credit cap that is  
10 applicable in that taxable year.

11 (b) Tax credits allowed pursuant to this subdivision shall be allowed  
12 in the taxable year that the qualified rehabilitation is placed in  
13 service under section 167 of the federal internal revenue code.

14 (c) If the credit allowed the taxpayer pursuant to section 47 of the  
15 internal revenue code with respect to a qualified rehabilitation is  
16 recaptured pursuant to subsection (a) of section 50 of the internal  
17 revenue code, a portion of the credit allowed under this subsection must  
18 be added back in the same taxable year and in the same proportion as the  
19 federal credit.

20 (d) The credit allowed under this subdivision for any taxable year  
21 shall not reduce the tax due for such year to less than the amount  
22 prescribed in paragraph (d) of subdivision one of section two hundred  
23 ten of this article. However, if the amount of the credit allowed under  
24 this subdivision for any taxable year reduces the tax to such amount or  
25 if the taxpayer otherwise pays tax based on the fixed dollar minimum  
26 amount, any amount of credit thus not deductible in such taxable year  
27 shall be treated as an overpayment of tax to be recredited or refunded

28 in accordance with the provisions of section one thousand eighty-six of  
29 this chapter. Provided, however, the provisions of subsection (c) of  
30 section one thousand eighty-eight of this chapter notwithstanding, no  
31 interest shall be paid thereon.

32 (e) To be eligible for the credit allowable under this subdivision,  
33 the rehabilitation project shall be in whole or in part located within a  
34 census tract which is identified as being at or below one hundred  
35 percent of the state median family income as calculated as of January  
36 first of each year using the most recent five year estimate from the  
37 American community survey published by the United States Census bureau.

38 27. Credits of New York S corporations. (a) General. Notwithstanding  
39 the provisions of this section, no carryover of credit allowable in a  
40 New York C year shall be deducted from the tax otherwise due under this  
41 article in a New York S year, and no credit allowable in a New York S  
42 year, or carryover of such credit, shall be deducted from the tax  
43 imposed by this article. However, a New York S year shall be treated as  
44 a taxable year for purposes of determining the number of taxable years  
45 to which a credit may be carried over under this section. Notwithstand-  
46 ing the first sentence of this subdivision, however, the credit for the  
47 special additional mortgage recording tax shall be allowed as provided  
48 in subdivision fifteen of this section, and the carryover of any such  
49 credit shall be determined without regard to whether the credit is  
50 carried from a New York C year to a New York S year or vice-versa.

51 29. Hire a vet credit. (a) Allowance of credit. For taxable years  
52 beginning on or after January first, two thousand fifteen and before  
53 January first, two thousand seventeen, a taxpayer shall be allowed a  
54 credit, to be computed as provided in this subdivision, against the tax  
55 imposed by this article, for hiring and employing, for not less than one  
56 year and for not less than thirty-five hours each week, a qualified  
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1 veteran within the state. The taxpayer may claim the credit in the year  
2 in which the qualified veteran completes one year of employment by the  
3 taxpayer. If the taxpayer claims the credit allowed under this subdivi-  
4 sion, the taxpayer may not use the hiring of a qualified veteran that is  
5 the basis for this credit in the basis of any other credit allowed under  
6 this article.

7 (b) Qualified veteran. A qualified veteran is an individual:

8 (1) who served on active duty in the United States army, navy, air  
9 force, marine corps, coast guard or the reserves thereof, or who served  
10 in active military service of the United States as a member of the army  
11 national guard, air national guard, New York guard or New York naval  
12 militia; who was released from active duty by general or honorable  
13 discharge after September eleventh, two thousand one;

14 (2) who commences employment by the qualified taxpayer on or after  
15 January first, two thousand fourteen, and before January first, two  
16 thousand sixteen; and

17 (3) who certifies by signed affidavit, under penalty of perjury, that  
18 he or she has not been employed for thirty-five or more hours during any  
19 week in the one hundred eighty day period immediately prior to his or  
20 her employment by the taxpayer.

21 (c) Employer prohibition. An employer shall not discharge an employee  
22 and hire a qualifying veteran solely for the purpose of qualifying for  
23 this credit.

24 (d) Amount of credit. The amount of the credit shall be ten percent of  
25 the total amount of wages paid to the qualified veteran during the  
26 veteran's first full year of employment. Provided, however, that, if the  
27 qualified veteran is a disabled veteran, as defined in paragraph (b) of  
28 subdivision one of section eighty-five of the civil service law, the  
29 amount of the credit shall be fifteen percent of the total amount of  
30 wages paid to the qualified veteran during the veteran's first full year  
31 of employment. The credit allowed pursuant to this subdivision shall not  
32 exceed in any taxable year, five thousand dollars for any qualified



33 veteran and fifteen thousand dollars for any qualified veteran who is a  
34 disabled veteran.

35 (e) Carryover. The credit allowed under this subdivision for any taxa-  
36 ble year shall not reduce the tax due for such year to less than the  
37 amount prescribed in paragraph (d) of subdivision one of section two  
38 hundred ten of this article. However, if the amount of credit allowable  
39 under this subdivision for any taxable year reduces the tax to such  
40 amount or if the taxpayer otherwise pays tax based on the fixed dollar  
41 minimum amount, any amount of credit not deductible in such taxable year  
42 may be carried over to the following three years and may be deducted  
43 from the taxpayer's tax for such year or years.

44 30. Alternative fuels and electric vehicle recharging property credit.

45 (a) General. A taxpayer shall be allowed a credit, to be computed as  
46 hereinafter provided, against the tax imposed by this article for alter-  
47 native fuel vehicle refueling and electric vehicle recharging property  
48 placed in service during the taxable year.

49 (b) Alternative fuel vehicle refueling property and electric vehicle  
50 recharging property. The credit under this subdivision for alternative  
51 fuel vehicle refueling property and electric vehicle recharging property  
52 shall equal for each installation of property the lesser of five thou-  
53 sand dollars or fifty percent of the cost of any such property:

54 (i) which is located in this state;

55 (ii) which constitutes alternative fuel vehicle refueling property or  
56 electric vehicle recharging property; and

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1 (iii) for which none of the cost has been paid for from the proceeds  
2 of grants, including grants from the New York state energy research and  
3 development authority or the New York power authority.

4 (c) Definitions. (i) The term "alternative fuel vehicle refueling  
5 property" means all of the equipment needed to dispense any fuel at  
6 least eighty-five percent of the volume of which consists of one or more  
7 of the following: natural gas, liquified natural gas, liquified petrole-  
8 um, or hydrogen.

9 (ii) The term "electric vehicle recharging property" means all of the  
10 equipment needed to convey electric power from the electric grid or  
11 another power source to an onboard vehicle energy storage system.

12 (d) Carryovers. In no event shall the credit under this subdivision be  
13 allowed in an amount which will reduce the tax payable to less than the  
14 amount prescribed in paragraph (d) of subdivision one of section two  
15 hundred ten of this article. Provided, however, that if the amount of  
16 credit allowable under this subdivision for any taxable year reduces the  
17 tax to such amount or if the taxpayer otherwise pays tax based on the  
18 fixed dollar minimum amount, any amount of credit not deductible in such  
19 taxable year may be carried over to the following year or years and may  
20 be deducted from the taxpayer's tax for such year or years.

21 (e) Credit recapture. If, at any time before the end of its recovery  
22 period, alternative fuel vehicle refueling or electric vehicle recharg-  
23 ing property ceases to be qualified, a recapture amount must be added  
24 back in the year in which such cessation occurs.

25 (i) Alternative fuel vehicle refueling property or electric vehicle  
26 recharging property ceases to be qualified if:

27 (I) the property no longer qualifies as alternative fuel vehicle refu-  
28 eling property or electric vehicle recharging property; or

29 (II) fifty percent or more of the use of the property in a taxable  
30 year is other than in a trade or business in this state; or

31 (III) the taxpayer receiving the credit under this subdivision sells  
32 or disposes of the property and knows or has reason to know that the  
33 property will be used in a manner described in clauses (I) and (II) of  
34 this subparagraph.

35 (ii) Recapture amount. The recapture amount is equal to the credit  
36 allowable under this subdivision multiplied by a fraction, the numerator  
37 of which is the total recovery period for the property minus the number



38 of recovery years prior to, but not including, the recapture year, and  
39 the denominator of which is the total recovery period.

40 (f) Termination. The credit allowed by paragraph (b) of this subdivi-  
41 sion shall not apply in taxable years beginning after December thirty-  
42 first, two thousand seventeen.

43 31. Excelsior jobs program credit. (a) Allowance of credit. A taxpayer  
44 will be allowed a credit, to be computed as provided in section thirty-  
45 one of this chapter, against the tax imposed by this article.

46 (b) Application of credit. The credit allowed under this subdivision  
47 for any taxable year may not reduce the tax due for such year to less  
48 than the amount prescribed in paragraph (d) of subdivision one of  
49 section two hundred ten of this article. However, if the amount of cred-  
50 it allowed under this subdivision for any taxable year reduces the tax  
51 to such amount or if the taxpayer otherwise pays tax based on the fixed  
52 dollar minimum amount, any amount of credit thus not deductible in such  
53 taxable year will be treated as an overpayment of tax to be credited or  
54 refunded in accordance with the provisions of section one thousand  
55 eighty-six of this chapter. Provided, however, the provisions of

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1 subsection (c) of section one thousand eighty-eight of this chapter  
2 notwithstanding, no interest will be paid thereon.

3 32. Empire state film post production credit. (a) Allowance of credit.  
4 A taxpayer who is eligible pursuant to section thirty-one of this chap-  
5 ter shall be allowed a credit to be computed as provided in such section  
6 thirty-one against the tax imposed by this article.

7 (b) Application of credit. The credit allowed under this subdivision  
8 for any taxable year shall not reduce the tax due for such year to less  
9 than the amount prescribed in paragraph (d) of subdivision one of  
10 section two hundred ten of this article. Provided, however, that if the  
11 amount of the credit allowable under this subdivision for any taxable  
12 year reduces the tax to such amount or if the taxpayer otherwise pays  
13 tax based on the fixed dollar minimum amount, fifty percent of the  
14 excess shall be treated as an overpayment of tax to be credited or  
15 refunded in accordance with the provisions of section one thousand  
16 eighty-six of this chapter. Provided, however, the provisions of  
17 subsection (c) of section one thousand eighty-eight of this chapter  
18 notwithstanding, no interest shall be paid thereon. The balance of such  
19 credit not credited or refunded in such taxable year may be a carryover  
20 to the immediately succeeding taxable year and may be deducted from the  
21 taxpayer's tax for such year. The excess, if any, of the amount of the  
22 credit over the tax for such succeeding year shall be treated as an  
23 overpayment of tax to be credited or refunded in accordance with the  
24 provisions of section one thousand eighty-six of this chapter. Provided,  
25 however, the provisions of subsection (c) of section one thousand eight-  
26 y-eight of this chapter notwithstanding, no interest shall be paid ther-  
27 eon.

28 33. Temporary deferral nonrefundable payout credit. (a) Allowance of  
29 credit. A taxpayer shall be allowed a credit, to be computed as provided  
30 in subdivision one of section thirty-four of this chapter, against the  
31 tax imposed by this article.

32 (b) Application of credit. The credit allowed under this subdivision  
33 for any taxable year shall not reduce the tax due for that year to less  
34 than the amount prescribed in paragraph (d) of subdivision one of  
35 section two hundred ten of this article. However, if the amount of cred-  
36 it allowed under this subdivision for any taxable year reduces the tax  
37 to such amount or if the taxpayer otherwise pays tax based on the fixed  
38 dollar minimum amount, any amount of credit thus not deductible in such  
39 taxable year may be carried over to the following year or years and may  
40 be deducted from the taxpayer's tax for such year or years.

41 34. Temporary deferral refundable payout credit. (a) Allowance of  
42 credit. A taxpayer shall be allowed a credit, to be computed as provided  
43 in subdivision two of section thirty-four of this chapter, against the

44 tax imposed by this article.

45 (b) Application of credit. In no event shall the credit under this  
46 subdivision be allowed in an amount which will reduce the tax to less  
47 than the amount prescribed in paragraph (d) of subdivision one of  
48 section two hundred ten of this article. If, however, the amount of  
49 credit allowed under this subdivision for any taxable year reduces the  
50 tax to such amount or if the taxpayer otherwise pays tax based on the  
51 fixed dollar minimum amount, any amount of credit not deductible in such  
52 taxable year shall be treated as an overpayment of tax to be refunded in  
53 accordance with the provisions of section one thousand eighty-six of  
54 this chapter, provided however, that no interest shall be paid thereon.

55 35. Economic transformation and facility redevelopment program tax  
56 credit. (a) Allowance of credit. A taxpayer shall be allowed a credit,  
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1 to be computed as provided in section thirty-five of this chapter,  
2 against the tax imposed by this article.

3 (b) Application of credit. The credit allowed under this subdivision  
4 for any taxable year may not reduce the tax due for such year to less  
5 than the amount prescribed in paragraph (d) of subdivision one of  
6 section two hundred ten of this article. However, if the amount of cred-  
7 it allowed under this subdivision for any taxable year reduces the tax  
8 to such amount or if the taxpayer otherwise pays tax based on the fixed  
9 dollar minimum amount, any amount of credit thus not deductible in such  
10 taxable year will be treated as an overpayment of tax to be credited or  
11 refunded in accordance with the provisions of section one thousand  
12 eighty-six of this chapter. Provided, however, the provisions of  
13 subsection (c) of section one thousand eighty-eight of this chapter  
14 notwithstanding, no interest will be paid thereon.

15 36. New York youth works tax credit. (a) A taxpayer that has been  
16 certified by the commissioner of labor as a qualified employer pursuant  
17 to section twenty-five-a of the labor law shall be allowed a credit  
18 against the tax imposed by this article equal to (i) five hundred  
19 dollars per month for up to six months for each qualified employee the  
20 employer employs in a full-time job or two hundred fifty dollars per  
21 month for up to six months for each qualified employee the employer  
22 employs in a part-time job of at least twenty hours per week or ten  
23 hours per week when the qualified employee is enrolled in high school  
24 full-time, (ii) one thousand dollars for each qualified employee who is  
25 employed for at least an additional six months by the qualified employer  
26 in a full-time job or five hundred dollars for each qualified employee  
27 who is employed for at least an additional six months by the qualified  
28 employer in a part-time job of at least twenty hours per week or ten  
29 hours per week when the qualified employee is enrolled in high school  
30 full-time, and (iii) an additional one thousand dollars for each quali-  
31 fied employee who is employed for at least an additional year after the  
32 first year of the employee's employment by the qualified employer in a  
33 full-time job or five hundred dollars for each qualified employee who is  
34 employed for at least an additional year after the first year of the  
35 employee's employment by the qualified employer in a part-time job of at  
36 least twenty hours per week or ten hours per week when the qualified  
37 employee is enrolled in high school full-time. For purposes of this  
38 subdivision, the term "qualified employee" shall have the same meaning  
39 as set forth in subdivision (b) of section twenty-five-a of the labor  
40 law. The portion of the credit described in subparagraph (i) of this  
41 paragraph shall be allowed for the taxable year in which the wages are  
42 paid to the qualified employee, and the portion of the credit described  
43 in subparagraph (ii) of this paragraph shall be allowed in the taxable  
44 year in which the additional six month period ends.

45 (b) The credit allowed under this subdivision for any taxable year may  
46 not reduce the tax due for that year to less than the amount prescribed  
47 in paragraph (d) of subdivision one of section two hundred ten of this  
48 article. However, if the amount of the credit allowed under this subdivi-

49 vision for any taxable year reduces the tax to that amount or if the  
50 taxpayer otherwise pays tax based on the fixed dollar minimum amount,  
51 any amount of credit not deductible in that taxable year will be treated  
52 as an overpayment of tax to be credited or refunded in accordance with  
53 the provisions of section one thousand eighty-six of this chapter.  
54 Provided, however, no interest will be paid thereon.

55 (c) The taxpayer may be required to attach to its tax return its  
56 certificate of eligibility issued by the commissioner of labor pursuant  
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1 to section twenty-five-a of the labor law. In no event shall the taxpay-  
2 er be allowed a credit greater than the amount of the credit listed on  
3 the certificate of eligibility. Notwithstanding any provision of this  
4 chapter to the contrary, the commissioner and the commissioner's desig-  
5 nees may release the names and addresses of any taxpayer claiming this  
6 credit and the amount of the credit earned by the taxpayer. Provided,  
7 however, if a taxpayer claims this credit because it is a member of a  
8 limited liability company or a partner in a partnership, only the amount  
9 of credit earned by the entity and not the amount of credit claimed by  
10 the taxpayer may be released.

11 37. Empire state jobs retention program credit. (a) Allowance of cred-  
12 it. A taxpayer will be allowed a credit, to be computed as provided in  
13 section thirty-six of this chapter, against the taxes imposed by this  
14 article.

15 (b) Application of credit. The credit allowed under this subdivision  
16 for any taxable year will not reduce the tax due for such year to less  
17 than the amount prescribed in paragraph (d) of subdivision one of  
18 section two hundred ten of this article. However, if the amount of cred-  
19 it allowed under this subdivision for any taxable year reduces the tax  
20 to such amount or if the taxpayer otherwise pays tax based on the fixed  
21 dollar minimum amount, any amount of credit thus not deductible in such  
22 taxable year will be treated as an overpayment of tax to be credited or  
23 refunded in accordance with the provisions of section one thousand  
24 eighty-six of this chapter. Provided, however, the provisions of  
25 subsection (c) of section one thousand eighty-eight of this chapter  
26 notwithstanding, no interest will be paid thereon.

27 38. Credit for companies who provide transportation to individuals  
28 with disabilities. (a) Allowance and amount of credit. A taxpayer, who  
29 provides a taxicab service as defined in section one hundred forty-  
30 eight-a of the vehicle and traffic law, or a livery service as defined  
31 in section one hundred twenty-one-e of the vehicle and traffic law,  
32 shall be allowed a credit, to be computed as provided in this subdivi-  
33 sion, against the tax imposed by this article. The amount of the credit  
34 shall be equal to the incremental cost associated with upgrading a vehi-  
35 cle so that it is accessible by individuals with disabilities as defined  
36 in paragraph (b) of this subdivision. Provided, however, that such cred-  
37 it shall not exceed ten thousand dollars per vehicle. For purposes of  
38 this subdivision, purchases of new vehicles that are initially manufact-  
39 ured to be accessible for individuals with disabilities and for which  
40 there is no comparable make and model that does not include the equip-  
41 ment necessary to provide accessibility to individuals with disabili-  
42 ties, the credit shall be ten thousand dollars per vehicle.

43 (b) Definition. The term "accessible by individuals with disabilities"  
44 shall, for the purposes of this subdivision, refer to a vehicle that  
45 complies with federal regulations promulgated pursuant to the Americans  
46 with Disabilities Act applicable to vans under twenty-two feet in  
47 length, by the federal Department of Transportation, in Code of Federal  
48 Regulations, title 49, parts 37 and 38, and by the federal Architecture  
49 and Transportation Barriers Compliance Board, in Code of Federal Regu-  
50 lations, title 36, section 1192.23, and the Federal Motor Vehicle Safety  
51 Standards, Code of Federal Regulations, title 49, part 57.

52 (c) Application of credit. In no event shall the credit allowed under  
53 this subdivision for any taxable year reduce the tax due for such year

54 to less than the amount prescribed in paragraph (d) of subdivision one  
55 of section two hundred ten of this article. However, if the amount of  
56 credit allowed under this subdivision for any taxable year reduces the  
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1 tax to such amount or if the taxpayer otherwise pays tax based on the  
2 fixed dollar minimum amount, any amount of credit thus not deductible in  
3 such taxable year shall be carried over to the following year or years,  
4 and may be deducted from the taxpayer's tax for such year or years.

5 39. Beer production credit. A taxpayer shall be allowed a credit, to  
6 be computed as provided in section thirty-seven of this chapter, against  
7 the tax imposed by this article. In no event shall the credit allowed  
8 under this subdivision for any taxable year reduce the tax due for such  
9 year to less than the amount prescribed in paragraph (d) of subdivision  
10 one of section two hundred ten of this article. However, if the amount  
11 of credit allowed under this subdivision for any taxable year reduces  
12 the tax to such amount or if the taxpayer otherwise pays tax based on  
13 the fixed dollar minimum amount, any amount of credit thus not deduct-  
14 ible in such taxable year shall be treated as an overpayment of tax to  
15 be credited or refunded in accordance with the provisions of section one  
16 thousand eighty-six of this chapter. Provided, however, the provisions  
17 of subsection (c) of section one thousand eighty-eight of this chapter  
18 notwithstanding, no interest shall be paid thereon.

19 40. Minimum wage reimbursement credit. (a) Allowance of credit. A  
20 taxpayer shall be allowed a credit, to be computed as provided in  
21 section thirty-eight of this chapter, against the tax imposed by this  
22 article.

23 (b) Application of credit. The credit allowed under this subdivision  
24 for any taxable year may not reduce the tax due for such year to less  
25 than the amount prescribed in paragraph (d) of subdivision one of  
26 section two hundred ten of this article. However, if the amount of cred-  
27 it allowed under this subdivision for any taxable year reduces the tax  
28 to such amount or if the taxpayer otherwise pays tax based on the fixed  
29 dollar minimum amount, any amount of credit thus not deductible in such  
30 taxable year will be treated as an overpayment of tax to be credited or  
31 refunded in accordance with the provisions of section one thousand  
32 eighty-six of this chapter. Provided, however, the provisions of  
33 subsection (c) of section one thousand eighty-eight of this chapter  
34 notwithstanding, no interest will be paid thereon.

35 41. The tax-free NY area tax elimination credit. A taxpayer shall be  
36 allowed a credit to be computed as provided in section forty of this  
37 chapter, against the tax imposed by this article. Unless the taxpayer  
38 has a tax-free NY area allocation factor of one hundred percent, the  
39 credit allowed under this subdivision for any taxable year shall not  
40 reduce the tax due for such year to less than the amount prescribed in  
41 paragraph (d) of subdivision one of section two hundred ten of this  
42 article. However, any amount of credit not deductible in such taxable  
43 year shall be treated as an overpayment of tax to be credited or  
44 refunded in accordance with the provisions of section one thousand  
45 eighty-six of this chapter. Provided, however, the provisions of  
46 subsection (c) of section one thousand eighty-eight of this chapter  
47 notwithstanding, no interest shall be paid thereon.

48 42. Alternative base credit. (a) If the tax imposed on a taxpayer by  
49 subdivision one of section two hundred nine of this article is the  
50 amount prescribed in paragraph (b) of subdivision one of section two  
51 hundred ten of this article, the taxpayer shall be allowed a credit  
52 against the tax imposed under this article equal to the amount of tax  
53 paid to another state computed on a tax base identical to the tax base  
54 prescribed in such paragraph (b). If the tax imposed on a taxpayer by  
55 subdivision one of section two hundred nine of this article is the  
56 amount prescribed in paragraph (d) of subdivision one of section two

1 hundred ten of this article, the taxpayer shall be allowed a credit  
2 against the tax imposed under this article equal to the amount of tax  
3 paid to another state computed on a tax base identical to the tax base  
4 prescribed in such paragraph (d).

5 (b) In no event shall the credit allowed under this subdivision for  
6 any taxable year reduce the tax due for such year to less than the  
7 amount prescribed in paragraph (d) of subdivision one of section two  
8 hundred ten of this article. However, if the amount of credit allowed  
9 under this subdivision for any taxable year reduces the tax to such  
10 amount or if the taxpayer otherwise pays tax based on the fixed dollar  
11 minimum amount, any amount of credit thus not deductible in such taxable  
12 year shall be carried over to the following year or years, and may be  
13 deducted from the taxpayer's tax for such year or years.

14 43. Real property tax credit for manufacturers. (a) A qualified New  
15 York manufacturer, as defined in subparagraph (vi) of paragraph (a) of  
16 subdivision one of section two hundred ten of this article, will be  
17 allowed a credit equal to twenty percent of the real property tax it  
18 paid during the taxable year for real property owned by such manufactur-  
19 er in New York which was principally used during the taxable year for  
20 manufacturing to the extent not deducted in determining entire net  
21 income. This credit will not be allowed if the real property taxes that  
22 are the basis for this credit are included in the calculation of another  
23 credit claimed by the taxpayer.

24 (b) (1) For purposes of this subdivision, the term real property tax  
25 means a charge imposed upon real property by or on behalf of a county,  
26 city, town, village or school district for municipal or school district  
27 purposes, provided that the charge is levied for the general public  
28 welfare by the proper taxing authorities at a like rate against all  
29 property over which such authorities have jurisdiction, and provided  
30 that where taxes are levied pursuant to article eighteen or nineteen of  
31 the real property tax law, the property must have been taxed at the rate  
32 determined for the class in which it is contained, as provided by such  
33 article eighteen or nineteen, whichever is applicable. The term real  
34 property tax does not include a charge for local benefits, including any  
35 portion of that charge that is properly allocated to the costs attribut-  
36 able to maintenance or interest, when (i) the property subject to the  
37 charge is limited to the property that benefits from the charge, or (ii)  
38 the amount of the charge is determined by the benefit to the property  
39 assessed, or (iii) the improvement for which the charge is assessed  
40 tends to increase the property value.

41 (2) In addition, the term real property tax includes taxes paid by the  
42 taxpayer upon real property principally used during the taxable year by  
43 the taxpayer in manufacturing where the taxpayer leases such real prop-  
44 erty from an unrelated third party if the following conditions are  
45 satisfied: (i) the tax must be paid by the taxpayer as lessee pursuant  
46 to explicit requirements in a written lease, and (ii) the taxpayer as  
47 lessee has paid such taxes directly to the taxing authority and has  
48 received a written receipt for payment of taxes from the taxing authori-  
49 ty. In the case of a combined group that constitutes a qualified New  
50 York manufacturer, the conditions in the preceding sentence are satis-  
51 fied if one corporation in the combined group is the lessee and another  
52 corporation in the combined group makes the payments to the taxing  
53 authority.

54 (3) The term real property tax does not include a payment made by the  
55 taxpayer in connection with an agreement for the payment in lieu of

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1 taxes on real property, whether such property is owned or leased by the  
2 taxpayer.

3 (4) The real property taxes must be paid by the taxpayer in the year  
4 such taxes become a lien on the real property.

5 (c) Credit recapture. Where a qualified New York manufacturer's real  
6 property taxes which were the basis for the allowance of the credit

7 provided for under this subdivision are subsequently reduced as a result  
8 of a final order in any proceeding under article seven of the real prop-  
9 erty tax law or other provision of law, the taxpayer shall add back, in  
10 the taxable year in which such final order is issued, the excess of (1)  
11 the amount of credit originally allowed for a taxable year over (2) the  
12 amount of credit determined based upon the reduced real property taxes.  
13 If such final order reduces real property taxes for more than one year,  
14 the taxpayer must determine how much of such reduction is attributable  
15 to each year covered by such final order and calculate the amount of  
16 credit which is required by this subdivision to be recaptured for each  
17 year based on such reduction.

18 (d) The credit allowed under this subdivision for any taxable year  
19 shall not reduce the tax due for such year to less than twenty-five  
20 dollars.

21 44. The tax-free NY area excise tax on telecommunication services  
22 credit. A taxpayer that is a business or owner of a business that is  
23 located in a tax-free NY area approved pursuant to article twenty-one of  
24 the economic development law shall be allowed a credit equal to the  
25 excise tax on telecommunication services imposed by section one hundred  
26 eighty-six-e of this chapter and passed through to such business during  
27 the taxable year to the extent not otherwise deducted in computing  
28 entire net income under this article. However, any amount of credit not  
29 deductible in such taxable year shall be treated as an overpayment of  
30 tax to be credited or refunded in accordance with the provisions of  
31 section one thousand eighty-six of this chapter. This credit may be  
32 claimed only where any tax imposed by such section one hundred eighty-  
33 six-e has been separately stated on a bill from the provider of telecom-  
34 munication services and paid by such business with respect to such  
35 services rendered within a tax-free NY area during the taxable year.  
36 Unless the taxpayer has a tax-free NY area allocation factor of one  
37 hundred percent, the credit allowed under this subdivision for any taxa-  
38 ble year shall not reduce the tax due for such year to less than the  
39 amount prescribed in paragraph (d) of subdivision one of section two  
40 hundred ten of this chapter. Provided, however, the provisions of  
41 subsection (c) of section one thousand eighty-eight of this chapter  
42 notwithstanding, no interest shall be paid thereon.

43 45. Order of credits. (a) Credits allowable under this article which  
44 cannot be carried over and which are not refundable shall be deducted  
45 first. The credit allowable under subdivision six of this section shall  
46 be deducted immediately after the deduction of all credits allowable  
47 under this article which cannot be carried over and which are not  
48 refundable, whether or not a portion of such credit is refundable.  
49 Credits allowable under this article which can be carried over, and  
50 carryovers of such credits, shall be deducted next after the deduction  
51 of the credit allowable under subdivision six of this section, and among  
52 such credits, those whose carryover is of limited duration shall be  
53 deducted before those whose carryover is of unlimited duration. Credits  
54 allowable under this article which are refundable (other than the credit  
55 allowable under subdivision six of this section) shall be deducted last.

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1 46. Notwithstanding the repeal of the credit provisions contained in  
2 section two hundred ten of this article or in article thirty-two of this  
3 chapter and the enactment of this section by a chapter of the laws of  
4 two thousand fourteen:

5 (a) A taxpayer shall be allowed to utilize any carryforward amounts of  
6 credits to which the taxpayer was entitled as of the close of the taxa-  
7 ble year beginning on or after January first, two thousand fourteen and  
8 before January first, two thousand fifteen, other than the carryforward  
9 amount of the minimum tax credit provided under subdivision thirteen of  
10 section two hundred ten, as that subdivision was in effect on December  
11 thirty-first, two thousand fourteen.

12 (b) A taxpayer shall be required in a taxable year beginning on or



13 after January first, two thousand fifteen, to recapture all or a portion  
14 of a credit allowed under a credit provision in section two hundred ten  
15 or article thirty-two of this chapter for a taxable year beginning prior  
16 to January first, two thousand fifteen if recapture would have been  
17 required under such credit provision.

18 § 18. The tax law is amended by adding a new section 210-C to read as  
19 follows:

20 § 210-C. Combined reports. 1. Tax. The tax on a combined report shall  
21 be the highest of (i) the combined business income base multiplied by  
22 the tax rate specified in paragraph (a) of subdivision one of section  
23 two hundred ten of this article; (ii) the combined capital base multi-  
24 plied by the tax rate specified in paragraph (b) of subdivision one of  
25 section two hundred ten of this article, but not exceeding the limita-  
26 tion provided for in that paragraph (b); or (iii) the fixed dollar mini-  
27 imum that is attributable to the designated agent of the combined group.  
28 In addition, the tax on a combined report shall include the fixed dollar  
29 minimum tax specified in paragraph (d) of subdivision one of section two  
30 hundred ten of this article for each member of the combined group, other  
31 than the designated agent, that is a taxpayer.

32 (b) The combined business income base is the amount of the combined  
33 business income of the combined group that is apportioned to the state,  
34 reduced by any net operating loss deduction for the combined group. The  
35 combined capital base is the amount of the combined capital of the  
36 combined group that is apportioned to the state.

37 2. Combined reports required. (a) Except as provided in paragraph (c)  
38 of this subdivision, any taxpayer (i) which owns or controls either  
39 directly or indirectly more than fifty percent of the voting power of  
40 the capital stock of one or more other corporations, or (ii) more than  
41 fifty percent of the voting power of the capital stock of which is owned  
42 or controlled either directly or indirectly by one or more other corpo-  
43 rations, or (iii) more than fifty percent of the voting power of the  
44 capital stock of which and the capital stock of one or more other corpo-  
45 rations, is owned or controlled, directly or indirectly, by the same  
46 interests, and (iv) that is engaged in a unitary business with those  
47 corporations (hereinafter referred to as "related corporations"), shall  
48 make a combined report with those other corporations.

49 (b) A corporation required to make a combined report within the mean-  
50 ing of this section shall also include (i) a captive REIT and a captive  
51 RIC if the captive REIT or captive RIC is not required to be included in  
52 a combined report under article thirty-three of this chapter; (ii) a  
53 combinable captive insurance company; and (iii) an alien corporation  
54 that satisfies the conditions in paragraph (a) of this subdivision if  
55 (I) under any provision of the internal revenue code, that corporation  
56 is treated as a "domestic corporation" as defined in section seven thou-

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1 sand seven hundred one of the internal revenue code, or (II) it has  
2 effectively connected income for the taxable year pursuant to clause  
3 (iv) of the opening paragraph of subdivision nine of section two hundred  
4 eight of this article.

5 (c) A corporation required or permitted to make a combined report  
6 under this section does not include (i) a corporation that is taxable  
7 under a franchise tax imposed by article nine or article thirty-three of  
8 this chapter or would be taxable under a franchise tax imposed by arti-  
9 cle nine or thirty-three of this chapter if subject to tax; (ii) a REIT  
10 that is not a captive REIT, and a RIC that is not a captive RIC; (iii) a  
11 New York S corporation; or (iv) an alien corporation that under any  
12 provision of the internal revenue code is not treated as a "domestic  
13 corporation" as defined in section seven thousand seven hundred one of  
14 such code and has no effectively connected income for the taxable year  
15 pursuant to clause (iv) of the opening paragraph of subdivision nine of  
16 section two hundred eight of this article. If a corporation is subject  
17 to tax under this article solely as a result of its ownership of a



18 limited partner interest in a limited partnership that is doing busi-  
19 ness, employing capital, owning or leasing property, maintaining an  
20 office in this state, or deriving receipts from activity in this state,  
21 and none of the corporation's related corporations are subject to tax  
22 under this article, such corporation shall not be required or permitted  
23 to file a combined report under this section with such related corpo-  
24 rations.

25 (d) A combined report shall be filed by the designated agent of the  
26 combined group as determined under subdivision seven of this section.

27 3. Commonly owned group election. (a) Subject to the provisions of  
28 paragraph (c) of subdivision two of this section, a taxpayer may elect  
29 to treat as its combined group all corporations that meet the ownership  
30 requirements described in paragraph (a) of subdivision two of this  
31 section (such corporations collectively referred to in this subdivision  
32 as the "commonly owned group"). If that election is made, the commonly  
33 owned group shall calculate the combined business income, combined capi-  
34 tal, and fixed dollar minimum bases of all members of the group in  
35 accordance with paragraph four of this subdivision, whether or not that  
36 business income or business capital is from a single unitary business.

37 (b) The election under this subdivision shall be made on an original,  
38 timely filed return of the combined group. Any corporation entering a  
39 commonly owned group subsequent to the year of election shall be  
40 included in the combined group and is considered to have waived any  
41 objection to its inclusion in the combined group.

42 (c) The election shall be irrevocable, and binding for and applicable  
43 to the taxable year for which it is made and for the next six taxable  
44 years. The election will automatically be renewed for another seven  
45 taxable years after it has been in effect for seven taxable years unless  
46 it is affirmatively revoked. The revocation shall be made on an  
47 original, timely filed return for the first taxable year after the  
48 completion of a seven year period for which an election under this  
49 subdivision was in place. In the case of a revocation, a new election  
50 under this subdivision shall not be permitted in any of the immediately  
51 following three taxable years. In determining the seven and three year  
52 periods described in this paragraph, short taxable years shall not be  
53 considered or counted.

54 4. Computation of tax bases on a combined report. (a) In computing the  
55 tax bases for a combined report, the combined group shall generally be  
56 treated as a single corporation, except as otherwise provided, and

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1 subject to any regulations or guidance issued by the commissioner or the  
2 department.

3 (b) (i) In computing combined business income, all intercorporate divi-  
4 dends shall be eliminated, and all other intercorporate transactions  
5 shall be deferred in a manner similar to the United States Treasury  
6 regulations relating to intercompany transactions under section fifteen  
7 hundred two of the internal revenue code.

8 (ii) In computing combined capital, all intercorporate stockholdings,  
9 intercorporate bills, intercorporate notes receivable and payable,  
10 intercorporate accounts receivable and payable, and other intercorporate  
11 indebtedness, shall be eliminated.

12 (c) Qualification for credits, including any limitations thereon,  
13 shall be determined separately for each of the members of the combined  
14 group, and shall not be determined on a combined group basis, except as  
15 otherwise provided. However, the credits shall be applied against the  
16 combined tax of the group. To the extent that a provision of section two  
17 hundred ten-B of this article limits a credit to the fixed dollar mini-  
18 imum amount prescribed in paragraph (d) of subdivision one of section two  
19 hundred ten of this article, such fixed dollar minimum amount shall be  
20 the fixed dollar minimum amount that is attributable to the designated  
21 agent of the combined group.

22 (d) (i) A net operating loss deduction is allowed in computing the

23 combined business income base. Such deduction may reduce the tax on the  
24 combined business income base to the higher of the tax on the combined  
25 capital base or the fixed dollar minimum amount that is attributable to  
26 the designated agent of the combined group. A combined net operating  
27 loss deduction is equal to the amount of combined net operating loss or  
28 losses from one or more taxable years that are carried forward to a  
29 particular income year. A combined net operating loss is the combined  
30 business loss incurred in a particular taxable year multiplied by the  
31 combined apportionment factor for that year determined as provided in  
32 subdivision five of this section.

33 (ii) The combined net operating loss deduction and combined net oper-  
34 ating loss are also subject to the provisions contained in clauses one  
35 through six of subparagraph (ix) of paragraph (a) of subdivision one of  
36 section two hundred ten of this article.

37 (iii) In the case of a corporation that files a combined report,  
38 either in the year the net operating loss is incurred or in the year in  
39 which a deduction is claimed on account of the loss, the combined net  
40 operating loss deduction is determined as if the combined group is a  
41 single corporation and, to the extent possible and not otherwise incon-  
42 sistent with this subdivision, is subject to the same limitations that  
43 would apply for federal income tax purposes under the internal revenue  
44 code and the code of federal regulations as if such corporation had  
45 filed for such taxable year a consolidated federal income tax return  
46 with the same corporations included in the combined report. If a corpo-  
47 ration files a combined report, regardless of whether it filed a sepa-  
48 rate return or consolidated return for federal income tax purposes, the  
49 net operating loss and net operating loss deduction for the combined  
50 group must be computed as if the corporation had filed a consolidated  
51 return for the same corporations for federal income tax purposes.

52 (iv) In general, any net operating loss carryover from a year in which  
53 a combined report was filed shall be based on the combined net operating  
54 loss of the group of corporations filing such report. The portion of the  
55 combined loss attributable to any member of the group that files a sepa-  
56 rate report for a succeeding taxable year will be an amount bearing the  
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1 same relation to the combined loss as the net operating loss of such  
2 corporation bears to the total net operating loss of all members of the  
3 group having such losses to the extent that they are taken into account  
4 in computing the combined net operating loss.

5 (d-1) A net operating loss conversion subtraction is allowed in  
6 computing the combined business income base, as provided in subparagraph  
7 (viii) of paragraph (a) of subdivision one of section two hundred ten of  
8 this article. Such subtraction may reduce the tax on the combined busi-  
9 ness income base to the higher of the tax on the combined capital base  
10 or the fixed dollar minimum amount that is attributable to the desig-  
11 nated agent of the combined group.

12 (e) Any election made pursuant to paragraph (b) of subdivision six,  
13 and paragraphs (b) and (c) of subdivision six-a of section two hundred  
14 eight of this article shall apply to all members of the combined group.

15 (f) (i) In the case of a captive REIT or captive RIC required under  
16 this section to be included in a combined report, entire net income  
17 shall be computed as required under subdivision five (in the case of a  
18 captive REIT) or subdivision seven (in the case of a captive RIC) of  
19 section two hundred nine of this article. However, the deduction under  
20 the internal revenue code for dividends paid by the captive REIT or  
21 captive RIC to any member of the affiliated group that includes the  
22 corporation that directly or indirectly owns over fifty percent of the  
23 voting stock of the captive REIT or captive RIC shall not be allowed.  
24 For purposes of this subparagraph, the term "affiliated group" means  
25 "affiliated group" as defined in section fifteen hundred four of the  
26 internal revenue code, but without regard to the exceptions provided for  
27 in subsection (b) of that section.

28 (ii) In the case of a combinable captive insurance company required  
29 under this section to be included in a combined report, entire net  
30 income shall be computed as required by subdivision nine of section two  
31 hundred eight of this article.

32 (g) If more than one member of a combined group is eligible for any of  
33 the modifications described in paragraphs (r), (s) and (t) of subdivi-  
34 sion nine of section two hundred eight of this article, all such members  
35 must utilize the same modification.

36 5. Apportionment on a combined report. (a) In determining the appor-  
37 tionment factor for a combined report, the receipts, net income, net  
38 gains and other items of all members of the combined group, whether or  
39 not they are a taxpayer, are included and intercorporate receipts,  
40 income and gains are eliminated. Receipts, net income, net gains and  
41 other items are sourced, and the amounts allowed in the apportionment  
42 factor are determined, as provided in section two hundred ten-A of this  
43 article.

44 (b) An election made to apportion income and gains from qualifying  
45 financial instruments pursuant to subparagraph one of paragraph (a) of  
46 subdivision five of section two hundred ten-A of this article shall  
47 apply to all members of the combined group.

48 6. Liability of combined group members. Every member of the combined  
49 group that is subject to tax under this article shall be jointly and  
50 severally liable for the tax due pursuant to a combined report.

51 7. Designated agent. Each combined group shall have one designated  
52 agent, which shall be a taxpayer. The designated agent is the parent  
53 corporation of the combined group. If there is no such parent corpo-  
54 ration, or the parent corporation is not a taxpayer, then another member  
55 of the combined group that is a taxpayer may be appointed as the desig-

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1 nated agent. Only the designated agent may act on behalf of the members  
2 of the combined group for matters relating to the combined report.

3 § 19. Subdivisions 2-a, 3, 4 and 5 of section 211 of the tax law,  
4 subdivision 2-a as added and subdivision 5 as amended by chapter 817 of  
5 the laws of 1987, subdivision 3 as amended by chapter 770 of the laws of  
6 1992, subdivision 4 as amended by section 2 of part T of chapter 407 of  
7 the laws of 1999, the opening paragraph and the second undesignated  
8 paragraph of paragraph (a) of subdivision 4 as amended by section 1,  
9 subparagraph 4 of paragraph (a) of subdivision 4 as amended by section  
10 2, and subparagraph 5 of paragraph (a) of subdivision 4 as amended by  
11 section 3 of part J of chapter 60 of the laws of 2007, subparagraph 6 of  
12 paragraph (a) of subdivision 4 as added by section 3 of part FF1 of  
13 chapter 57 of the laws of 2008, subparagraph 7 of paragraph (a) of  
14 subdivision 4 as added by section 2 and subparagraph 1 of paragraph (b)  
15 of subdivision 4 as amended by section 3 of part E1 of chapter 57 of the  
16 laws of 2009, are amended to read as follows:

17 2-a. The [~~tax commission~~] commissioner may prescribe regulations and  
18 instructions requiring returns of information to be made and filed in  
19 conjunction with the reports required to be filed pursuant to [~~section~~  
20 ~~two hundred eleven~~] this article, relating to payments made to share-  
21 holders owning, directly or indirectly, individually or in the aggre-  
22 gate, more than fifty percent of the issued capital stock of the taxpay-  
23 er, where such payments are treated as payments of interest in the  
24 computation of entire net income [~~or minimum taxable income~~] reported on  
25 such reports.

26 3. If the amount of taxable income [~~or alternative minimum taxable~~  
27 ~~income~~] for any year of any taxpayer (including any taxpayer which has  
28 elected to be taxed under subchapter s of chapter one of the internal  
29 revenue code), as returned to the United States treasury department is  
30 changed or corrected by the commissioner of internal revenue or other  
31 officer of the United States or other competent authority, or where a  
32 renegotiation of a contract or subcontract with the United States  
33 results in a change in taxable income [~~or alternative minimum taxable~~

34 ~~income~~], such taxpayer shall report such changed or corrected taxable  
35 income [~~or alternative minimum taxable income~~], or the results of such  
36 renegotiation, within ninety days (or one hundred twenty days, in the  
37 case of a taxpayer making a combined report under this article for such  
38 year) after the final determination of such change or correction or  
39 renegotiation, or as required by the commissioner, and shall concede the  
40 accuracy of such determination or state wherein it is erroneous. The  
41 allowance of a tentative carryback adjustment based upon a net operating  
42 loss carryback or net capital loss carryback pursuant to section sixty-  
43 four hundred eleven of the internal revenue code, as amended, shall be  
44 treated as a final determination for purposes of this subdivision. Any  
45 taxpayer filing an amended return with such department shall also file  
46 within ninety days (or one hundred twenty days, in the case of a taxpay-  
47 er making a combined report under this article for such year) thereafter  
48 an amended report with the commissioner.

49 4. [~~(a) Combined reports permitted or required. Any taxpayer, which  
50 owns or controls either directly or indirectly substantially all the  
51 capital stock of one or more other corporations, or substantially all  
52 the capital stock of which is owned or controlled either directly or  
53 indirectly by one or more other corporations or by interests which own  
54 or control either directly or indirectly substantially all the capital  
55 stock of one or more other corporations, (hereinafter referred to in  
56 this paragraph as "related corporations"), shall make a combined report~~  
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1 ~~covering any related corporations if there are substantial intercorpo-  
2 rate transactions among the related corporations, regardless of the  
3 transfer price for such intercorporate transactions. It is not necessary  
4 that there be substantial intercorporate transactions between any one  
5 corporation and every other related corporation. It is necessary, howev-  
6 er, that there be substantial intercorporate transactions between the  
7 taxpayer and a related corporation or collectively, a group of such  
8 related corporations. The report shall set forth such information as the  
9 commissioner may require, subject to the provisions of subparagraphs one  
10 through five of this paragraph.~~

11 ~~In determining whether there are substantial intercorporate trans-  
12 actions, the commissioner shall consider and evaluate all activities and  
13 transactions of the taxpayer and its related corporations. Activities  
14 and transactions that will be considered include, but are not limited  
15 to: (i) manufacturing, acquiring goods or property, or performing  
16 services, for related corporations; (ii) selling goods acquired from  
17 related corporations; (iii) financing sales of related corporations;  
18 (iv) performing related customer services using common facilities and  
19 employees for related corporations; (v) incurring expenses that benefit,  
20 directly or indirectly, one or more related corporations, and (vi)  
21 transferring assets, including such assets as accounts receivable,  
22 patents or trademarks from one or more related corporations.~~

23 ~~(1) Any corporation which owns or controls either directly or indi-  
24 rectly substantially all the capital stock of a DISC not exempt from tax  
25 under paragraph (i) of subdivision nine of section two hundred eight of  
26 this article shall be allowed, at the election of such corporation, to  
27 make a report on a combined basis covering such DISC, but the failure of  
28 such corporation to make such election shall not prohibit the commis-  
29 sioner from requiring a combined report covering such corporation and  
30 such DISC.~~

31 ~~(2) (i) No taxpayer may be permitted to make a report on a combined  
32 basis covering any such other corporations where such taxpayer or any  
33 such other corporation allocates in accordance with clause (A) of  
34 subparagraph seven of paragraph (a) of subdivision three of section two  
35 hundred ten of this article (relating to aviation corporations) and such  
36 taxpayer or any such other corporation does not so allocate, unless such  
37 taxpayer or such other corporation is a qualified air freight forwarder  
38 with respect to such other corporation or such taxpayer, respectively,~~

39 ~~and all taxpayers included on such combined report elect, by filing such~~  
40 ~~combined report, to have such qualified air freight forwarder so~~  
41 ~~included.~~

42 ~~(ii) A corporation is a qualified air freight forwarder with respect~~  
43 ~~to another corporation:~~

44 ~~(A) if it owns or controls either directly or indirectly all of the~~  
45 ~~capital stock of such other corporation, or if all of its capital stock~~  
46 ~~is owned or controlled either directly or indirectly by such other~~  
47 ~~corporation, or if all of the capital stock of both corporations is~~  
48 ~~owned or controlled either directly or indirectly by the same interests,~~

49 ~~(B) if it is principally engaged in the business of air freight~~  
50 ~~forwarding, and~~

51 ~~(C) if its air freight forwarding business is carried on principally~~  
52 ~~with the airline or airlines operated by such other corporation.~~

53 ~~(3) No taxpayer may be permitted to make a report on a combined basis~~  
54 ~~covering any such other corporations where such taxpayer or any such~~  
55 ~~other corporation allocates in accordance with subparagraph eight of~~  
56 ~~paragraph (a) of subdivision three of section two hundred ten of this~~  
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1 ~~article (relating to railroad and trucking corporations) and such~~  
2 ~~taxpayer or any such other corporation does not so allocate.~~

3 ~~(4) Except as provided in the first undesignated paragraph of this~~  
4 ~~paragraph, no combined report covering any corporation shall be required~~  
5 ~~unless the commissioner deems such a report necessary, because of~~  
6 ~~inter-company transactions or some agreement, understanding, arrangement~~  
7 ~~or transaction referred to in subdivision five of this section, in order~~  
8 ~~properly to reflect the tax liability under this article.~~

9 ~~(5) A corporation organized under the laws of a country other than the~~  
10 ~~United States shall not be required or permitted to make a report on a~~  
11 ~~combined basis.~~

12 ~~(6) (i) For purposes of this subparagraph, the term "closest control-~~  
13 ~~ling stockholder" means the corporation that indirectly owns or controls~~  
14 ~~over fifty percent of the voting stock of a captive REIT or captive RIC,~~  
15 ~~is subject to tax under this article, article thirty-two or thirty-three~~  
16 ~~of this chapter or otherwise required to be included in a combined~~  
17 ~~return or report under this article, article thirty-two or thirty-three~~  
18 ~~of this chapter, and is the fewest tiers of corporations away in the~~  
19 ~~ownership structure from the captive REIT or captive RIC. The commis-~~  
20 ~~sioner is authorized to prescribe by regulation or published guidance~~  
21 ~~the criteria for determining the closest controlling stockholder.~~

22 ~~(ii) A captive REIT or a captive RIC must be included in a combined~~  
23 ~~report with the corporation that directly owns or controls over fifty~~  
24 ~~percent of the voting stock of the captive REIT or captive RIC if that~~  
25 ~~corporation is subject to tax or required to be included in a combined~~  
26 ~~report under this article.~~

27 ~~(iii) If over fifty percent of the voting stock of a captive REIT or~~  
28 ~~captive RIC is not directly owned or controlled by a corporation that is~~  
29 ~~subject to tax or required to be included in a combined report under~~  
30 ~~this article, then the captive REIT or captive RIC must be included in a~~  
31 ~~combined return or report with the corporation that is the closest~~  
32 ~~controlling stockholder of the captive REIT or captive RIC. If the clos-~~  
33 ~~est controlling stockholder of the captive REIT or captive RIC is~~  
34 ~~subject to tax or otherwise required to be included in a combined report~~  
35 ~~under this article, then the captive REIT or captive RIC must be~~  
36 ~~included in a combined report under this article.~~

37 ~~(iv) If the corporation that directly owns or controls the voting~~  
38 ~~stock of the captive REIT or captive RIC is described in subparagraph~~  
39 ~~two, three or five of this paragraph as a corporation not permitted to~~  
40 ~~make a combined report, then the provisions in clause (iii) of this~~  
41 ~~subparagraph must be applied to determine the corporation in whose~~  
42 ~~combined return or report the captive REIT or captive RIC should be~~  
43 ~~included. If, under clause (iii) of this subparagraph, the corporation~~

44 ~~that is the closest controlling stockholder of the captive REIT or~~  
45 ~~captive RIC is described in subparagraph two, three or five of this~~  
46 ~~paragraph as a corporation not permitted to make a combined return, then~~  
47 ~~that corporation is deemed to not be in the ownership structure of the~~  
48 ~~captive REIT or captive RIC, and the closest controlling stockholder~~  
49 ~~will be determined without regard to that corporation.~~

50 ~~(v) If a captive REIT owns the stock of a qualified REIT subsidiary~~  
51 ~~(as defined in paragraph two of subsection (i) of section eight hundred~~  
52 ~~fifty-six of the internal revenue code), then the qualified REIT subsid-~~  
53 ~~iary must be included in a combined report with the captive REIT.~~

54 ~~(vi) If a captive REIT or a captive RIC is required under this subpar-~~  
55 ~~agraph to be included in a combined report with another corporation, and~~  
56 ~~that other corporation is also required to be included in a combined~~  
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1 ~~report with another related corporation or corporations under this para-~~  
2 ~~graph, then the captive REIT or the captive RIC must be included in that~~  
3 ~~combined report with those corporations.~~

4 ~~(vii) If a captive REIT or a captive RIC is not required to be~~  
5 ~~included in a combined report with another corporation under clause (ii)~~  
6 ~~or (iii) of this subparagraph, or in a combined return under the~~  
7 ~~provisions of either subparagraph (v) of paragraph two of subsection (f)~~  
8 ~~of section fourteen hundred sixty-two or paragraph four of subdivision~~  
9 ~~(f) of section fifteen hundred fifteen of this chapter, then the captive~~  
10 ~~REIT or captive RIC is subject to the opening provisions of this para-~~  
11 ~~graph and the provisions of subparagraph four of this paragraph. The~~  
12 ~~captive REIT or captive RIC must be included in a combined report under~~  
13 ~~this article with another corporation if either the substantial inter-~~  
14 ~~corporate transactions requirement in the opening provisions of this~~  
15 ~~paragraph or the inter-company transactions or agreement, understanding,~~  
16 ~~arrangement or transaction requirement of subparagraph four of this~~  
17 ~~paragraph is satisfied and more than fifty percent of the voting stock~~  
18 ~~of the captive REIT or the captive RIC and substantially all of the~~  
19 ~~capital stock of that other corporation are owned and controlled,~~  
20 ~~directly or indirectly, by the same corporation.~~

21 ~~(7) (i) For purposes of this subparagraph, the term "closest control-~~  
22 ~~ling stockholder" means the corporation that indirectly owns or controls~~  
23 ~~over fifty percent of the voting stock of an overcapitalized captive~~  
24 ~~insurance company; is subject to tax under this article or article thirty~~  
25 ~~two of this chapter, or is otherwise required to be included in a~~  
26 ~~combined return or report under this article or article thirty-two of~~  
27 ~~this chapter; and is the fewest tiers of corporations away in the owner-~~  
28 ~~ship structure from the overcapitalized captive insurance company. The~~  
29 ~~commissioner is authorized to prescribe by regulation or published guid-~~  
30 ~~ance the criteria for determining the closest controlling stockholder.~~

31 ~~(ii) An overcapitalized captive insurance company must be included in~~  
32 ~~a combined report with the corporation that directly owns or controls~~  
33 ~~over fifty percent of the voting stock of the overcapitalized captive~~  
34 ~~insurance company if that corporation is subject to tax or required to~~  
35 ~~be included in a combined report under this article.~~

36 ~~(iii) If over fifty percent of the voting stock of an overcapitalized~~  
37 ~~captive insurance company is not directly owned or controlled by a~~  
38 ~~corporation that is subject to tax or required to be included in a~~  
39 ~~combined report under this article, then the overcapitalized captive~~  
40 ~~insurance company must be included in a combined return or report with~~  
41 ~~the corporation that is the closest controlling stockholder of the over-~~  
42 ~~capitalized captive insurance company. If the closest controlling stock-~~  
43 ~~holder of the overcapitalized captive insurance company is subject to~~  
44 ~~tax or otherwise required to be included in a combined report under this~~  
45 ~~article, then the overcapitalized captive insurance company must be~~  
46 ~~included in a combined report under this article.~~

47 ~~(iv) If the corporation that directly owns or controls the voting~~  
48 ~~stock of the overcapitalized captive insurance company is described in~~

49 ~~subparagraph two, three, or five of this paragraph as a corporation not~~  
50 ~~permitted to make a combined report, then the provisions in clause (iii)~~  
51 ~~of this subparagraph must be applied to determine the corporation in~~  
52 ~~whose combined return or report the overcapitalized captive insurance~~  
53 ~~company should be included. If, under clause (iii) of this subparagraph,~~  
54 ~~the corporation that is the closest controlling stockholder of the over-~~  
55 ~~capitalized captive insurance company is described in subparagraph two,~~  
56 ~~three or five of this paragraph as a corporation not permitted to make a~~  
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1 ~~combined return, then that corporation is deemed not to be in the owner-~~  
2 ~~ship structure of the overcapitalized captive insurance company, and the~~  
3 ~~closest controlling stockholder will be determined without regard to~~  
4 ~~that corporation.~~

5 ~~(v) If an overcapitalized captive insurance company is required under~~  
6 ~~this subparagraph to be included in a combined report with another~~  
7 ~~corporation, and that other corporation is also required to be included~~  
8 ~~in a combined report with another related corporation or corporations~~  
9 ~~under this paragraph, then the overcapitalized captive insurance company~~  
10 ~~must be included in that combined report with those corporations.~~

11 ~~(vi) If an overcapitalized captive insurance company is not required~~  
12 ~~to be included in a combined report with another corporation under~~  
13 ~~clause (ii) or (iii) of this subparagraph, or in a combined return under~~  
14 ~~the provisions of subparagraph (v) of paragraph two of subsection (f) of~~  
15 ~~section fourteen hundred sixty-two of this chapter, then the overcapi-~~  
16 ~~talized captive insurance company is subject to the opening provisions~~  
17 ~~of this paragraph and the provisions of subparagraph four of this para-~~  
18 ~~graph. The overcapitalized captive insurance company must be included in~~  
19 ~~a combined report under this article with another corporation if either~~  
20 ~~the substantial intercorporate transactions requirement in the opening~~  
21 ~~provisions of this paragraph or the inter-company transactions or agree-~~  
22 ~~ment, understanding, arrangement or transaction requirement of subpara-~~  
23 ~~graph four of this paragraph is satisfied, and both more than fifty~~  
24 ~~percent of the voting stock of the overcapitalized captive insurance~~  
25 ~~company and substantially all of the capital stock of that other corpo-~~  
26 ~~ration are owned and controlled, directly or indirectly, by the same~~  
27 ~~corporation.~~

28 ~~(b) Computation. (1) Tax. (i) In the case of a combined report the tax~~  
29 ~~shall be measured by the combined entire net income, combined minimum~~  
30 ~~taxable income, combined pre nineteen hundred ninety minimum taxable~~  
31 ~~income or combined capital, of all the corporations included in the~~  
32 ~~report, including any captive REIT, captive RIC or overcapitalized~~  
33 ~~captive insurance company; provided, however, in no event shall the tax~~  
34 ~~measured by combined capital exceed the limitation provided for in para-~~  
35 ~~graph (b) of subdivision one of section two hundred ten of this article.~~

36 ~~(ii) In the case of a captive REIT or captive RIC required under this~~  
37 ~~subdivision to be included in a combined report, entire net income must~~  
38 ~~be computed as required under subdivision five (in the case of a captive~~  
39 ~~REIT) or subdivision seven (in the case of a captive RIC) of section two~~  
40 ~~hundred nine of this article. However, the deduction under the internal~~  
41 ~~revenue code for dividends paid by the captive REIT or captive RIC to~~  
42 ~~any member of the affiliated group that includes the corporation that~~  
43 ~~directly or indirectly owns over fifty percent of the voting stock of~~  
44 ~~the captive REIT or captive RIC shall not be allowed for taxable years~~  
45 ~~beginning on or after January first, two thousand eight. The term~~  
46 ~~"affiliated group" means "affiliated group" as defined in section~~  
47 ~~fifteen hundred four of the internal revenue code, but without regard to~~  
48 ~~the exceptions provided for in subsection (b) of that section.~~

49 ~~(iii) In the case of an overcapitalized captive insurance company~~  
50 ~~required under this subdivision to be included in a combined report,~~  
51 ~~entire net income must be computed as required by subdivision nine of~~  
52 ~~section two hundred eight of this article.~~

53 ~~(2) Tax bases. In computing combined entire net income, combined mini-~~



54 ~~minimum taxable income or combined pre-nineteen hundred ninety minimum tax-~~  
55 ~~able income intercorporate dividends shall be eliminated, in computing~~  
56 ~~combined business and investment capital intercorporate stockholdings~~  
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1 ~~and intercorporate bills, notes and accounts receivable and payable and~~  
2 ~~other intercorporate indebtedness shall be eliminated and in computing~~  
3 ~~combined subsidiary capital intercorporate stockholdings shall be elimi-~~  
4 ~~nated, provided, however, that intercorporate dividends from a DISC or a~~  
5 ~~former DISC not exempt from tax under paragraph (i) of subdivision nine~~  
6 ~~of section two hundred eight of this article which are taxable as busi-~~  
7 ~~ness income under this article shall not be eliminated.~~

8 (3) ~~Air freight forwarders: allocation. Notwithstanding any provision~~  
9 ~~of law to the contrary, where a combined report includes a qualified air~~  
10 ~~freight forwarder and a corporation described in subparagraph seven of~~  
11 ~~paragraph (a) of subdivision three of section two hundred ten of this~~  
12 ~~chapter (relating to aviation corporations), in computing the combined~~  
13 ~~business allocation percentage such subparagraph seven shall be applied~~  
14 ~~with respect to such qualified air freight forwarder] For provisions~~  
15 relating to combined reports, see section two hundred ten-C of this  
16 article.

17 5. In case it shall appear to the [~~tax commission~~] commissioner that  
18 any agreement, understanding or arrangement exists between the taxpayer  
19 and any other corporation or any person or firm, whereby the activity,  
20 business, income or capital of the taxpayer within the state is improper-  
21 ly or inaccurately reflected, the [~~tax commission~~] commissioner is  
22 authorized and empowered, in [~~its~~] the commissioner's discretion and in  
23 such manner as [~~it~~] the commissioner may determine, to adjust items of  
24 income, deductions and capital, and to eliminate assets in computing any  
25 [~~allocation~~] apportionment percentage provided only that any income  
26 directly traceable thereto be also excluded from entire net income,  
27 [~~minimum taxable income or pre-nineteen hundred ninety minimum taxable~~  
28 ~~income,~~] so as equitably to determine the tax. Where (a) any taxpayer  
29 conducts its activity or business under any agreement, arrangement or  
30 understanding in such manner as either directly or indirectly to benefit  
31 its members or stockholders, or any of them, or any person or persons  
32 directly or indirectly interested in such activity or business, by  
33 entering into any transaction at more or less than a fair price which,  
34 but for such agreement, arrangement or understanding, might have been  
35 paid or received therefor, or (b) any taxpayer, a substantial portion of  
36 whose capital stock is owned either directly or indirectly by another  
37 corporation, enters into any transaction with such other corporation on  
38 such terms as to create an improper loss or net income, the [~~tax commis-~~  
39 ~~sion~~] commissioner may include in the entire net income[~~, minimum taxa-~~  
40 ~~ble income or pre-nineteen hundred ninety minimum taxable income~~] of the  
41 taxpayer the fair profits which, but for such agreement, arrangement or  
42 understanding, the taxpayer might have derived from such transaction.  
43 Where any taxpayer owns, directly or indirectly, more than fifty percent  
44 of the capital stock of another corporation subject to tax under section  
45 fifteen hundred two-a of this chapter and fifty percent or less of whose  
46 gross receipts for the taxable year consist of premiums, the commission-  
47 er may include in the entire net income of the taxpayer, as a deemed  
48 distribution, the amount of the net income of the other corporation that  
49 is in excess of its net premium income.

50 § 19-a. Subdivision 13 of section 211 of the tax law is REPEALED.

51 § 20. Subdivision 11 of section 2 of the tax law, as added by section  
52 1 of part E-1 of chapter 57 of the laws of 2009, is amended to read as  
53 follows:

54 11. The term "[~~overcapitalized~~] combinable captive insurance company"  
55 means an entity that is treated as an association taxable as a corpo-  
56 ration under the internal revenue code (a) more than fifty percent of

1 the voting stock of which is owned or controlled, directly or indirect-  
2 ly, by a single entity that is treated as an association taxable as a  
3 corporation under the internal revenue code and not exempt from federal  
4 income tax; (b) that is licensed as a captive insurance company under  
5 the laws of this state or another jurisdiction; (c) whose business  
6 includes providing, directly and indirectly, insurance or reinsurance  
7 covering the risks of its parent and/or members of its affiliated group;  
8 and (d) fifty percent or less of whose gross receipts for the taxable  
9 year consist of premiums from arrangements that constitute insurance for  
10 federal income tax purposes. For purposes of this subdivision, "affil-  
11 iated group" has the same meaning as that term is given in section 1504  
12 of the internal revenue code, except that the term "common parent corpo-  
13 ration" in that section is deemed to mean any person, as defined in  
14 section 7701 of the internal revenue code[+] and references to "at least  
15 eighty percent" in section 1504 of the internal revenue code are to be  
16 read as "fifty percent or more;" section 1504 of the internal revenue  
17 code is to be read without regard to the exclusions provided for in  
18 subsection (b) of that section; "premiums" has the same meaning as that  
19 term is given in paragraph one of subdivision (c) of section fifteen  
20 hundred ten of this chapter, except that it includes consideration for  
21 annuity contracts and excludes any part of the consideration for insur-  
22 ance, reinsurance or annuity contracts that do not provide bona fide  
23 insurance, reinsurance or annuity benefits; and "gross receipts"  
24 includes the amounts included in gross receipts for purposes of section  
25 501(c) (15) of the internal revenue code, except that those amounts also  
26 include all premiums as defined in this subdivision.

27 § 21. Subdivision (a) of section 1500 of the tax law, as separately  
28 amended by section 1 of part B-1 and section 8 of part E-1 of chapter 57  
29 of the laws of 2009, is amended to read as follows:

30 (a) The term "insurance corporation" includes a corporation, associ-  
31 ation, joint stock company or association, person, society, aggregation  
32 or partnership, by whatever name known, doing an insurance business,  
33 and, notwithstanding the provisions of section fifteen hundred twelve of  
34 this article, shall include (1) a risk retention group as defined in  
35 subsection (n) of section five thousand nine hundred two of the insur-  
36 ance law, (2) the state insurance fund and (3) a corporation, associ-  
37 ation, joint stock company or association, person, society, aggregation  
38 or partnership doing an insurance business as a member of the New York  
39 insurance exchange described in section six thousand two hundred one of  
40 the insurance law. The definition of the "state insurance fund"  
41 contained in this subdivision shall be limited in its effect to the  
42 provisions of this article and the related provisions of this chapter  
43 and shall have no force and effect other than with respect to such  
44 provisions. The term "insurance corporation" shall also include a  
45 captive insurance company doing a captive insurance business, as defined  
46 in subsections (c) and (b), respectively, of section seven thousand two  
47 of the insurance law; provided, however, "insurance corporation" shall  
48 not include the metropolitan transportation authority, or a public bene-  
49 fit corporation or not-for-profit corporation formed by a city with a  
50 population of one million or more pursuant to subsection (a) of section  
51 seven thousand five of the insurance law, each of which is expressly  
52 exempt from the payment of fees, taxes or assessments, whether state or  
53 local; and provided further "insurance corporation" does not include any  
54 [~~overcapitalized~~] combinable captive insurance company. The term "insur-  
55 ance corporation" shall also include an unauthorized insurer operating  
56 from an office within the state, pursuant to paragraph five of  
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1 subsection (b) of section one thousand one hundred one and subsection  
2 (i) of section two thousand one hundred seventeen of the insurance law.  
3 The term "insurance corporation" also includes a health maintenance  
4 organization required to obtain a certificate of authority under article  
5 forty-four of the public health law.

6 § 22. Subdivision (a) of section 1502-b of the tax law, as amended by  
7 section 9 of part E-1 of chapter 57 of the laws of 2009 and as further  
8 amended by section 104 of part A of chapter 62 of the laws of 2011, is  
9 amended to read as follows:

10 (a) In lieu of the taxes and tax surcharge imposed by sections fifteen  
11 hundred one, fifteen hundred two-a, fifteen hundred five-a, and fifteen  
12 hundred ten of this article, every captive insurance company licensed by  
13 the superintendent of financial services pursuant to the provisions of  
14 article seventy of the insurance law, other than the metropolitan trans-  
15 portation authority and a public benefit corporation or not-for-profit  
16 corporation formed by a city with a population of one million or more  
17 pursuant to subsection (a) of section seven thousand five of the insur-  
18 ance law, each of which is expressly exempt from the payment of fees,  
19 taxes or assessments whether state or local, and other than [~~an overcap-~~  
20 ~~italized~~] combinable captive insurance company, shall, for the privilege  
21 of exercising its corporate franchise, pay a tax on (1) all gross direct  
22 premiums, less return premiums thereon, written on risks located or  
23 resident in this state and (2) all assumed reinsurance premiums, less  
24 return premiums thereon, written on risks located or resident in this  
25 state. The rate of the tax imposed on gross direct premiums shall be  
26 four-tenths of one percent on all or any part of the first twenty  
27 million dollars of premiums, three-tenths of one percent on all or any  
28 part of the second twenty million dollars of premiums, two-tenths of one  
29 percent on all or any part of the third twenty million dollars of premi-  
30 ums, and seventy-five thousandths of one percent on each dollar of  
31 premiums thereafter. The rate of the tax on assumed reinsurance premiums  
32 shall be two hundred twenty-five thousandths of one percent on all or  
33 any part of the first twenty million dollars of premiums, one hundred  
34 and fifty thousandths of one percent on all or any part of the second  
35 twenty million dollars of premiums, fifty thousandths of one percent on  
36 all or any part of the third twenty million dollars of premiums and  
37 twenty-five thousandths of one percent on each dollar of premiums there-  
38 after. The tax imposed by this section shall be equal to the greater of  
39 (i) the sum of the tax imposed on gross direct premiums and the tax  
40 imposed on assumed reinsurance premiums or (ii) five thousand dollars.

41 § 23. Paragraph 4 of subdivision (f) of section 1515 of the tax law,  
42 as amended by section 16 of part FF-1 of chapter 57 of the laws of 2008,  
43 is amended to read as follows:

44 (4) (i) For purposes of this paragraph, the term "closest controlling  
45 stockholder" means the corporation that indirectly owns or controls over  
46 fifty percent of the voting stock of a captive REIT or captive RIC, is  
47 subject to tax under section fifteen hundred one of this article[~~7~~] or  
48 article nine-A [~~or article thirty-two~~] of this chapter or required to be  
49 included in a combined return or report under this article[~~7~~] or article  
50 nine-A [~~or article thirty-two~~] of this chapter, and is the fewest tiers  
51 of corporations away in the ownership structure from the captive REIT or  
52 captive RIC. The commissioner is authorized to prescribe by regulation  
53 or published guidance the criteria for determining the closest control-  
54 ling stockholder.

55 (ii) A captive REIT or a captive RIC must be included in a combined  
56 return with the corporation that directly owns or controls over fifty  
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1 percent of the voting stock of the captive REIT or captive RIC if that  
2 corporation is a life insurance corporation and is subject to tax or  
3 required to be included in a combined return under this article.

4 (iii) If over fifty percent of the voting stock of a captive REIT or  
5 captive RIC is not directly owned or controlled by a life insurance  
6 corporation that is subject to tax or required to be included in a  
7 combined return under this article, [~~then the captive REIT or captive~~  
8 ~~RIC must be included in a combined report or return with the corporation~~  
9 ~~that is the closest controlling stockholder of the captive REIT or~~  
10 ~~captive RIC. If~~] and the closest controlling stockholder of the captive

11 REIT or captive RIC is a life insurance corporation that is subject to  
12 tax or required to be included in a combined return under this article,  
13 then the captive REIT or captive RIC must be included in a combined  
14 return with the closest controlling stockholder under this article.

15 (iv) If a captive REIT owns the stock of a qualified REIT subsidiary  
16 (as defined in paragraph two of subsection (i) of section eight hundred  
17 fifty-six of the internal revenue code) and the captive REIT is required  
18 to be included in a combined return under subparagraphs (ii) or (iii) of  
19 this paragraph, then the qualified REIT subsidiary must be included in  
20 any combined return required to be made by the captive REIT that owns  
21 the stock of the qualified REIT subsidiary.

22 (v) If a captive REIT or a captive RIC is required under this para-  
23 graph to be included in a combined return with another corporation, and  
24 that other corporation is required to be included in a combined return  
25 with another [~~related~~] corporation under this subdivision, then the  
26 captive REIT or the captive RIC must be included in that combined return  
27 with the other [~~related~~] corporation.

28 § 24. Subdivisions (a), (b) and (c) of section 12 of the tax law, as  
29 added by chapter 615 of the laws of 1998, are amended to read as  
30 follows:

31 (a) For purposes of subdivision (b) of this section, the term "person"  
32 shall mean a corporation, joint stock company or association, insurance  
33 corporation, or banking corporation, as such terms are defined in  
34 section one hundred eighty-three, one hundred eighty-four, or one  
35 hundred eighty-six, or in article nine-A[, ~~thirty-two~~] or thirty-three  
36 of this chapter, imposing tax on such entities.

37 (b) No person shall be subject to the taxes imposed under section one  
38 hundred eighty-three, one hundred eighty-four or one hundred eighty-six,  
39 or article nine-A[, ~~thirty-two~~] or thirty-three of this chapter, solely  
40 by reason of (1) having its advertising stored on a server or other  
41 computer equipment located in this state (other than a server or other  
42 computer equipment owned or leased by such person), or (2) having its  
43 advertising disseminated or displayed on the Internet by an individual  
44 or entity subject to tax under section one hundred eighty-three, one  
45 hundred eighty-four or one hundred eighty-six, or article nine-A, twen-  
46 ty-two[, ~~thirty-two~~] or thirty-three of this chapter.

47 (c) A person, as such term is defined in subdivision (a) of section  
48 eleven hundred one of this chapter, shall not be deemed to be a vendor,  
49 for purposes of article twenty-eight of this chapter, solely by reason  
50 of (1) having its advertising stored on a server or other computer  
51 equipment located in this state (other than a server or other computer  
52 equipment owned or leased by such person), or (2) having its advertising  
53 disseminated or displayed on the Internet by an individual or entity  
54 subject to tax under section one hundred eighty-three, one hundred  
55 eighty-four or one hundred eighty-six, or article nine-A, twenty-two[~~7~~  
56 ~~thirty-two~~] or thirty-three of this chapter.

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1 § 25. Paragraph 1 of subdivision (a) of section 14 of the tax law, as  
2 amended by section 3 of part V1 of chapter 109 of the laws of 2006, is  
3 amended to read as follows:

4 (1) except as provided in paragraphs one-a and one-b of this subdivi-  
5 sion, for purposes of section one hundred eighty-seven-j and articles  
6 nine-A, twenty-two[, ~~thirty-two~~] and thirty-three of this chapter, for  
7 each of the taxable years within the "business tax benefit period,"  
8 which period shall consist of (A) in the case of a business enterprise  
9 with a test date occurring on or before December thirty-first, two thou-  
10 sand one, the first fifteen taxable years beginning on or after January  
11 first, two thousand one, (B) in the case of a business enterprise with a  
12 test date occurring on or after January first, two thousand two, but  
13 prior to April first, two thousand five, the fifteen taxable years next  
14 following the business enterprise's test year, and (C) in the case of a  
15 business enterprise which is first certified under article eighteen-B of

16 the general municipal law on or after April first, two thousand five,  
17 the ten taxable years starting with the taxable year in which the busi-  
18 ness enterprise's first date of certification under article eighteen-B  
19 of the general municipal law occurs, but only with respect to each of  
20 such business tax benefit period years for which the employment test is  
21 met,

22 § 26. Subdivision (f) of section 14 of the tax law, as amended by  
23 section 10 of part CC of chapter 85 of the laws of 2002, is amended to  
24 read as follows:

25 (f) Taxable year. The term "taxable year" means the taxable year of  
26 the business enterprise under section one hundred eighty-three, one  
27 hundred eighty-four, one hundred eighty-five or former section one  
28 hundred eighty-six of article nine, or under article nine-A, twenty-  
29 two[, ~~thirty-two~~] or thirty-three of this chapter. If a business enter-  
30 prise does not have a taxable year because it is exempt from taxation or  
31 otherwise not required to file a return under any of such sections of  
32 article nine or under article nine-A, twenty-two[, ~~thirty-two~~] or thir-  
33 ty-three, then the term "taxable year" means (i) the business enter-  
34 prise's federal taxable year, or, (ii) if the enterprise does not have a  
35 federal taxable year, the calendar year.

36 § 27. Paragraph 1 of subdivision (i) of section 14 of the tax law, as  
37 amended by section 5 of part A of chapter 63 of the laws of 2005, is  
38 amended to read as follows:

39 (1) for purposes of section one hundred eighty-seven-j of article  
40 nine, and articles nine-A, twenty-two[, ~~thirty-two~~] and thirty-three of  
41 this chapter, on the first day of the taxable year during which revoca-  
42 tion of its certification under article eighteen-B of the general munic-  
43 ipal law occurs, and

44 § 28. Paragraphs 1 and 2 of subdivision (j) of section 14 of the tax  
45 law, as amended by section 10 of part CC of chapter 85 of the laws of  
46 2002, are amended to read as follows:

47 (1) A new business shall include any corporation, except a corporation  
48 which is substantially similar in operation and in ownership to a busi-  
49 ness entity (or entities) taxable, or previously taxable, under section  
50 one hundred eighty-three, one hundred eighty-four, one hundred eighty-  
51 five or one hundred eighty-six of article nine; article nine-A[, ~~article~~  
52 ~~thirty-two~~] or thirty-three of this chapter; article twenty-three of  
53 this chapter or which would have been subject to tax under such article  
54 twenty-three (as such article was in effect on January first, nineteen  
55 hundred eighty), article thirty-two of this chapter or which would have  
56 been subject to tax under such article thirty-two (as such article was

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1 in effect on December thirty-first, two thousand fourteen) or the income  
2 (or losses) of which is (or was) includable under article twenty-two of  
3 this chapter.

4 (2) For purposes of article twenty-two of this chapter, an individual  
5 who is either a sole proprietor or a member of a partnership shall qual-  
6 ify as an owner of a new business unless the business of which the indi-  
7 vidual is an owner is substantially similar in operation and in owner-  
8 ship to a business entity taxable, or previously taxable, under section  
9 one hundred eighty-three, one hundred eighty-four, one hundred eighty-  
10 five or one hundred eighty-six of article nine; article nine-A[, ~~thir-~~  
11 ~~ty-two~~] or article thirty-three of this chapter; article twenty-three of  
12 this chapter or which would have been subject to tax under such article  
13 twenty-three (as such article was in effect on January first, nineteen  
14 hundred eighty); article thirty-two of this chapter or which would have  
15 been subject to tax under such article thirty-two as such article was in  
16 effect on December thirty-first, two thousand fourteen or the income (or  
17 losses) of which is (or was) includable under article twenty-two.

18 § 29. Clauses (i) and (ii) of subparagraph (A) of paragraph 4 of  
19 subdivision (j) of section 14 of the tax law, as added by section 5 of  
20 part A of chapter 63 of the laws of 2005, are amended to read as

21 follows:

22 (i) Notwithstanding paragraphs one and two of this subdivision, a new  
23 business shall include any corporation which is identical in operation  
24 and ownership to a business entity (or entities) taxable under section  
25 one hundred eighty-three, one hundred eighty-four or one hundred eight-  
26 y-five of article nine; article nine-A[, ~~article thirty-two~~] or thirty-  
27 three of this chapter or the income (or losses) of which is includable  
28 under article twenty-two of this chapter, provided such corporation and  
29 such business entity or entities are operating in different counties in  
30 the state.

31 (ii) Notwithstanding paragraphs one and two of this subdivision, an  
32 individual who is either a sole proprietor or a member of a partnership  
33 shall qualify as an owner of a new business if the business of which the  
34 individual is an owner is identical in operation and in ownership to a  
35 business entity (or entities) taxable under section one hundred eighty-  
36 three, one hundred eighty-four or one hundred eighty-five of article  
37 nine; article nine-A[, ~~article thirty-two~~] or thirty-three of this chap-  
38 ter or the income (or losses) of which is includable under article twen-  
39 ty-two of this chapter, provided such business and such business entity  
40 or entities are operating in different counties in the state.

41 § 30. Subparagraph (B) of paragraph 4 of subdivision (j) of section 14  
42 of the tax law, as amended by chapter 161 of the laws of 2005, is  
43 amended to read as follows:

44 (B) Notwithstanding any provisions of this subdivision to the contrary  
45 and notwithstanding subdivision c of section eighteen of part CC of  
46 chapter eighty-five of the laws of two thousand two, a corporation or  
47 partnership, which was first certified under article eighteen-B of the  
48 general municipal law before August first, two thousand two, has a base  
49 period of zero years or zero employment for its base period, and is  
50 similar in operation and in ownership to a business entity or entities  
51 taxable, or previously taxable, under sections specified in paragraph  
52 one or two of this subdivision or which would have been subject to tax  
53 under article twenty-three of this chapter (as such article was in  
54 effect on January first, nineteen hundred eighty) or which would have  
55 been subject to tax under article thirty-two of this chapter (as such  
56 article was in effect on December thirty-first, two thousand fourteen)  
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1 or the income or losses of which is or was includable under article  
2 twenty-two of this chapter shall not be deemed a new business if it was  
3 not formed for a valid business purpose, as such term is defined in  
4 clause (D) of subparagraph one of paragraph (o) of subdivision nine of  
5 section two hundred eight of this chapter and was formed solely to gain  
6 empire zone benefits.

7 § 31. Subdivision (k) of section 14 of the tax law, as amended by  
8 section 5 of part A of chapter 63 of the laws of 2005, is amended to  
9 read as follows:

10 (k) If the designation of an area as an empire zone is no longer in  
11 effect because section nine hundred sixty-nine of the general municipal  
12 law was not amended to extend the effective date of such designation so  
13 that the designations of all empire zones pursuant to article eighteen-B  
14 of the general municipal law have expired, a business enterprise that  
15 was certified pursuant to article eighteen-B of the general municipal  
16 law on the day immediately preceding the day on which such designation  
17 expired shall be deemed to continue to be certified under such article  
18 eighteen-B for purposes of this section, and sections fifteen, sixteen,  
19 section one hundred eighty-seven-j, subdivisions [~~twenty-seven~~] five and  
20 [~~twenty-eight~~] six of section two hundred [~~ten~~] ten-B, subsections (bb)  
21 and (cc) of section six hundred six, subdivision (z) of section eleven  
22 hundred fifteen[, ~~subsections (o) and (p) of section fourteen hundred~~  
23 ~~forty-six~~], and subdivisions (r) and (s) of section fifteen hundred  
24 eleven of this chapter. In addition, if the designation of an area as an  
25 empire zone is no longer in effect because section nine hundred sixty-

26 nine of the general municipal law was not amended to extend the effec-  
27 tive date of such designation so that the designations of all empire  
28 zones pursuant to article eighteen-B of the general municipal law have  
29 expired, all references to empire zones in the provisions of this chap-  
30 ter listed in the previous sentence shall be read as meaning areas  
31 designated as empire zones on the day immediately preceding the day on  
32 which such designation expired.

33 § 32. Subdivisions (a) and (h) of section 15 of the tax law, as  
34 amended by section 5 of part A of chapter 63 of the laws of 2005, are  
35 amended to read as follows:

36 (a) Allowance of credit. A taxpayer which is a qualified empire zone  
37 enterprise (QEZE), or which is a sole proprietor of a QEZE or a member  
38 of a partnership which is a QEZE, and which is subject to tax under  
39 article nine-A, twenty-two[, ~~thirty-two~~] or thirty-three of this chap-  
40 ter, shall be allowed a credit against such tax, pursuant to the  
41 provisions referenced in subdivision (h) of this section, for eligible  
42 real property taxes.

43 (h) Definitions and cross-references. For definitions of terms used in  
44 this section see section fourteen of this article. For application of  
45 the credit provided for in this section, see the following provisions of  
46 this chapter:

- 47 (1) Article 9: Section 187-j.
- 48 (2) Article 9-A: Section [~~210~~] 210-B: subdivision [~~27~~] 5.
- 49 (3) Article 22: Section 606: subsections (i) and (bb).
- 50 (4) [~~Article 32: Section 1456: subsection (e).~~
- 51 ~~(5)]~~ Article 33: Section 1511: subdivision (r).

52 § 33. Subdivision (a) of section 16 of the tax law, as added by  
53 section 2 of part GG of chapter 63 of the laws of 2000, is amended to  
54 read as follows:

55 (a) Allowance of credit. A taxpayer which is a qualified empire zone  
56 enterprise (QEZE), or which is a sole proprietor of a QEZE or a member  
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1 of a partnership which is a QEZE, and which is subject to tax under  
2 article nine-A, twenty-two[, ~~thirty-two~~] or thirty-three of this chap-  
3 ter, shall be allowed a credit against such tax, pursuant to the  
4 provisions referenced in subdivision (g) of this section, to be computed  
5 as hereinafter provided.

6 § 34. Paragraph 1, clause (ii) of subparagraph (B) of paragraph 2, and  
7 subparagraph (A) of paragraph 3 of subdivision (f) of section 16 of the  
8 tax law, as amended by section 14 of part CC of chapter 85 of the laws  
9 of 2002, are amended to read as follows:

10 (1) General. The tax factor shall be, in the case of article nine-A of  
11 this chapter, the [~~larger of the amounts~~] amount of tax determined for  
12 the taxable year under [~~paragraphs~~] paragraph (a) [~~and (c)~~] of subdivi-  
13 sion one of section two hundred ten of such article. The tax factor  
14 shall be, in the case of article twenty-two of this chapter, the tax  
15 determined for the taxable year under subsections (a) through (d) of  
16 section six hundred one of such article. [~~The tax factor shall be, in~~  
17 ~~the case of article thirty-two of this chapter, the larger of the~~  
18 ~~amounts of tax determined for the taxable year under subsection (a) and~~  
19 ~~paragraph two of subsection (b) of section fourteen hundred fifty-five~~  
20 ~~of such article.] The tax factor shall be, in the case of article thir-  
21 ty-three of this chapter, the larger of the amounts of tax determined  
22 for the taxable year under paragraphs one and three of subdivision (a)  
23 of section fifteen hundred two of such article.~~

24 (ii) For purposes of article nine-A[, ~~thirty-two or thirty-three~~] of  
25 this chapter, the term "partner's income from the partnership" means  
26 partnership items of income, gain, loss and deduction, and New York  
27 modifications thereto, entering into [~~entire net~~] business income[,   
28 ~~minimum taxable income, alternative entire net income or entire net~~  
29 ~~income plus compensation]~~ and the term "partner's entire income" means  
30 [~~entire net~~] business income[, ~~minimum taxable income, alternative~~



31 ~~entire net income or entire net income plus compensation,~~] allocated  
32 within the state. For purposes of article thirty-three of this chapter,  
33 the term "partner's income from the partnership" means partnership items  
34 of income, gain, loss and deduction, and New York modifications thereto,  
35 entering into entire net income or entire net income plus compensation  
36 and the term "partner's entire income" means entire net income, or  
37 entire net income plus compensation, allocated within the state. For  
38 purposes of article twenty-two of this chapter, the term "partner's  
39 income from the partnership" means partnership items of income, gain,  
40 loss and deduction, and New York modifications thereto, entering into  
41 New York adjusted gross income, and the term "partner's entire income"  
42 means New York adjusted gross income.

43 (A) Where the taxpayer is a qualified empire zone enterprise and is  
44 required or permitted to make a return or report on a combined basis  
45 under article nine-A[, ~~thirty-two~~] or article thirty-three of this chap-  
46 ter, the taxpayer's tax factor shall be the amount determined in para-  
47 graph one of this subdivision which is attributable to the income of the  
48 qualified empire zone enterprise. Such attribution shall be made in  
49 accordance with the ratio of the qualified empire zone enterprise's  
50 income allocated within the state to the combined group's income, or in  
51 accordance with such other methods as the commissioner may prescribe as  
52 providing an apportionment which reasonably reflects the portion of the  
53 combined group's tax attributable to the income of the qualified empire  
54 zone enterprise. In no event may the ratio so determined exceed 1.0.

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1 § 35. Subdivision (g) of section 16 of the tax law, as added by  
2 section 2 of part GG of chapter 63 of the laws of 2000, is amended to  
3 read as follows:

4 (g) Definitions and cross-references. For definitions of terms used in  
5 this section see sections fourteen and fifteen of this article. For  
6 application of the credit provided for in this section, see the follow-  
7 ing provisions of this chapter:

8 (1) Article 9-A: Section [~~210~~] 210-B: subdivision [~~28~~] 6.

9 (2) Article 22: Section 606: subsections (i) and (cc).

10 (3) [~~Article 32: Section 1456: subsection (p).~~

11 ~~(4)]~~ Article 33: Section 1511: subdivision (s).

12 § 36. Paragraph 1 of subdivision (b) of section 17 of the tax law, as  
13 added by section 43 of part S1 of chapter 57 of the laws of 2009, is  
14 amended to read as follows:

15 (1) The empire zones tax benefits report must contain the following  
16 information about the empire zone tax credits claimed under articles  
17 nine, nine-A, twenty-two[, ~~thirty-two~~] and thirty-three of this chapter  
18 during the previous calendar year:

19 (A) the name of each taxpayer claiming a credit; and

20 (B) the amount of each credit earned by each taxpayer.

21 § 37. Subdivisions (a) and (d) of section 18 of the tax law, as added  
22 by section 2 of part CC of chapter 63 of the laws of 2000, are amended  
23 to read as follows:

24 (a) Allowance of credit. A taxpayer subject to tax under article  
25 nine-A, twenty-two[, ~~thirty-two~~] or thirty-three of this chapter shall  
26 be allowed a credit against such tax, pursuant to the provisions refer-  
27 enced in subdivision (d) of this section, with respect to the ownership  
28 of eligible low-income buildings for which an eligibility statement has  
29 been issued by the commissioner of housing and community renewal. The  
30 amount of the credit shall be the credit amount for each such building  
31 allocated by such commissioner as provided in article two-A of the  
32 public housing law. The credit amount shall be allowed for each of the  
33 ten taxable years in the credit period, and any reduction in first-year  
34 credit as provided in subdivision two of section twenty-two of such law  
35 shall be allowed in the eleventh taxable year.

36 (d) Cross-references. For application of the credit provided for in  
37 this section, see the following provisions of this chapter:

38 (1) Article 9-A: Section ~~[210]~~ 210-B: subdivision ~~[30]~~ 15,

39 (2) Article 22: Section 606: subsections (i) and (x),

40 (3) ~~[Article 32: Section 1456: subsection (1),~~  
41 ~~(4)]~~ Article 33: Section 1511: subdivision (n).

42 § 38. Subparagraph (A) of paragraph 1 of subdivision (a) and subdivi-  
43 sion (f) of section 19 of the tax law, as added by section 2 of part II  
44 of chapter 63 of the laws of 2000, are amended to read as follows:

45 (A) Green building credit. A taxpayer subject to tax under article  
46 nine, nine-A, twenty-two~~[, thirty-two]~~ or thirty-three of this chapter  
47 shall be allowed a green building credit against such tax, pursuant to  
48 the provisions referenced in subdivision (f) of this section. Provided,  
49 however, no credit shall be allowed under this section unless the  
50 taxpayer has complied with the applicable requirements of paragraph two  
51 of subdivision (d) of this section (relating to reports to DEC). The  
52 amount of the credit shall be the sum of the credit components specified  
53 in paragraphs two through seven of this subdivision. Provided, however,  
54 the amount of each such credit component shall not exceed the limit set  
55 forth in the initial credit component certificate obtained pursuant to  
56 subdivision (c) of this section. In the determination of such credit  
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1 components, no cost paid or incurred by the taxpayer shall be the basis  
2 for more than one such component.

3 (f) Cross-references. For application of the credit provided for in  
4 this section, see the following provisions of this chapter:

5 (1) Article nine: Section one hundred eighty-seven-d;

6 (2) Article nine-A: Subdivision ~~[thirty-one]~~ sixteen of section two  
7 hundred ~~[ten]~~ ten-B;

8 (3) Article twenty-two: Subsections (i) and (y) of section six hundred  
9 six;

10 (4) ~~[Article thirty-two: Subsection (m) of section fourteen hundred~~  
11 ~~fifty-six;~~

12 ~~(5)]~~ Article thirty-three: Subdivision (o) of section fifteen hundred  
13 eleven.

14 § 39. Paragraphs 1 and 5 of subdivision (a) of section 21 of the tax  
15 law, as amended by section 1 of part H of chapter 577 of the laws of  
16 2004, are amended to read as follows:

17 (1) General. A taxpayer subject to tax under article nine, nine-A,  
18 twenty-two~~[, thirty-two]~~ or thirty-three of this chapter shall be  
19 allowed a credit against such tax, pursuant to the provisions referenced  
20 in subdivision (f) of this section. Such credit shall be allowed with  
21 respect to a qualified site, as such term is defined in paragraph one of  
22 subdivision (b) of this section. The amount of the credit in a taxable  
23 year shall be the sum of the credit components specified in paragraphs  
24 two, three and four of this subdivision applicable in such year.

25 (5) Applicable percentage. For purposes of paragraphs two, three and  
26 four of this subdivision, the applicable percentage shall be twelve  
27 percent in the case of credits claimed under article nine, nine-A~~[,~~  
28 ~~thirty-two]~~ or thirty-three of this chapter, and ten percent in the case  
29 of credits claimed under article twenty-two of this chapter, except that  
30 where at least fifty percent of the area of the qualified site relating  
31 to the credit provided for in this section is located in an environ-  
32 mental zone as defined in paragraph six of subdivision (b) of this  
33 section, the applicable percentage shall be increased by an additional  
34 eight percent. Provided, however, as afforded in section 27-1419 of the  
35 environmental conservation law, if the certificate of completion indi-  
36 cates that the qualified site has been remediated to Track 1 as that  
37 term is described in subdivision four of section 27-1415 of the environ-  
38 mental conservation law, the applicable percentage set forth in the  
39 first sentence of this paragraph shall be increased by an additional two  
40 percent.

41 § 39-a. Subdivisions (c) and (f) of section 21 of the tax law, as  
42 added by section 1 of part H of chapter 1 of the laws of 2003, are

43 amended to read as follows:

44 (c) Qualifying property. Property which qualifies for the credit  
45 provided for under this section and also for a credit provided for (1)  
46 under either subdivision [~~twelve~~] one or subdivision [~~twelve-B~~] three of  
47 section two hundred [~~ten~~] ten-B of this chapter, or both, or (2)  
48 subsection (a) or subsection (j) of section six hundred six of this  
49 chapter, or both [~~, (3) the credit provided for under subsection (i) of~~  
50 ~~section fourteen hundred fifty-six of this chapter, or (4) the credit~~  
51 ~~provided under subdivision (q) of section fifteen hundred eleven of this~~  
52 ~~chapter]~~ may be the basis for either the credit provided for under this  
53 section or one of the credits enumerated in paragraph one [~~,~~] or two [~~,~~  
54 ~~three or four~~] of this subdivision, but not both.

55 (f) Cross-references. For application of the credit provided for in  
56 this section, see the following provisions of this chapter:

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1 (1) Article 9: Section 187-g

2 (2) Article 9-A: Section [~~210~~] 210-B, subdivision [~~33~~] 17

3 (3) Article 22: Section 606, subsections (i) and (dd)

4 (4) [~~Article 32: Section 1456, subsection (q)~~

5 ~~(5)]~~ Article 33: Section 1511, subdivision (u).

6 § 40. Paragraph 3 of subdivision (a) and paragraphs 1 and 9 of subdivi-  
7 vision (b) of section 22 of the tax law, as amended by section 4 of part  
8 H of chapter 577 of the laws of 2004, are amended to read as follows:

9 (3) Developer. (i) A "developer" is a taxpayer under article nine,  
10 nine-A, twenty-two [~~, thirty-two~~] or thirty-three of this chapter who or  
11 which either (I) has been issued a certificate of completion with  
12 respect to a qualified site or (II) has purchased or in any other way  
13 has been conveyed all or any portion of a qualified site from a taxpayer  
14 or any other party who or which has been issued a certificate of  
15 completion with respect to such site provided, such purchase or convey-  
16 ance occurs within seven years of the effective date of the certificate  
17 of completion issued with respect to such qualified site. Provided  
18 further, that the taxpayer who or which is purchasing all or any portion  
19 of a qualified site and the taxpayer or any other party who or which has  
20 been issued a certificate of completion with respect to such site may  
21 not be related persons, as such term is defined in subparagraph (C) of  
22 paragraph three of subsection (b) of section four hundred sixty-five of  
23 the internal revenue code.

24 (ii) Where the entity to whom a certificate of completion has been  
25 issued is a partnership, or where the entity which has purchased all or  
26 any portion of a qualified site from a taxpayer who or which has been  
27 issued a certificate of completion with respect to such site within the  
28 applicable time limit is a partnership, any partner in such partnership  
29 who or which is taxable under article nine, nine-A, twenty-two [~~, thir-~~  
30 ~~ty-two~~] or thirty-three of this chapter shall be a developer under this  
31 paragraph. Where the entity to whom a certificate of completion has been  
32 issued is a New York S corporation, or where the entity which has  
33 purchased all or any portion of a qualified site from a taxpayer who or  
34 which has been issued a certificate of completion with respect to such  
35 site within the applicable time limit is a New York S corporation, any  
36 shareholder in such New York S corporation shall be a developer under  
37 this paragraph.

38 (1) Allowance of credit. A developer of a qualified site who or which  
39 is subject to tax under article nine, nine-A, twenty-two [~~, thirty-two~~]  
40 or thirty-three of this chapter, shall be allowed a credit against such  
41 tax, pursuant to the provisions referenced in paragraph nine of this  
42 subdivision, for eligible real property taxes imposed on such site.

43 (9) Cross-references. For application of the credit provided for in  
44 this subdivision, see the following provisions of this chapter:

45 (i) Article 9: Section 187-h.

46 (ii) Article 9-A: Section [~~210~~] 210-B: subdivision [~~34~~] 18.

47 (iii) Article 22: Section 606: subsections (i) and (ee).

48 (iv) [~~Article 32: Section 1456: subsection (r).~~  
49 ~~(v)~~] Article 33: Section 1511: subdivision (v).

50 § 41. Subdivision (a) of section 23 of the tax law, as amended by  
51 section 10 of part H chapter 577 of the laws of 2004, is amended to read  
52 as follows:

53 (a) Allowance of credit. General. A taxpayer subject to tax under  
54 article nine, nine-A, twenty-two[, ~~thirty-two~~] or thirty-three of this  
55 chapter shall be allowed a credit against such tax, pursuant to the  
56 provisions referenced in subdivision (e) of this section. The amount of  
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1 such credit shall be equal to the lesser of thirty thousand dollars or  
2 fifty percent of the premiums paid on or after the date of the brown-  
3 field site cleanup agreement executed by the taxpayer and the department  
4 of environmental conservation pursuant to section 27-1409 of the envi-  
5 ronmental conservation law by the taxpayer for environmental remediation  
6 insurance issued with respect to a qualified site.

7 § 42. Subdivision (e) of section 23 of the tax law, as added by  
8 section 19 of part H of chapter 1 of the laws of 2003, is amended to  
9 read as follows:

10 (e) Cross-references. For application of the credit provided for in  
11 this section, see the following provisions of this chapter:

- 12 (1) Article 9: Section 187-i
- 13 (2) Article 9-A: Section [~~210~~] 210-B, subdivision [~~35~~] 19
- 14 (3) Article 22: Section 606, subsections (i) and (ff)
- 15 (4) [~~Article 32: Section 1456, subsection (s)~~
- 16 ~~(5)~~] Article 33: Section 1511, subdivision (w).

17 § 43. Paragraphs 1 and 2 of subdivision (a) and clause (i) of subpara-  
18 graph (D) of paragraph 1 of subdivision (b) of section 25 of the tax  
19 law, as added by section 1 of part N of chapter 61 of the laws of 2005,  
20 are amended to read as follows:

21 (1) Every taxpayer, or person as defined in section seven thousand  
22 seven hundred one of the internal revenue code, required to file a  
23 disclosure statement with the internal revenue service pursuant to  
24 section six thousand eleven of the internal revenue code, or the regu-  
25 lations promulgated thereunder, related to a reportable transaction or a  
26 listed transaction, as those terms are defined in such section or regu-  
27 lations, must attach a duplicate of such disclosure statement to the  
28 return or report required to be filed by such taxpayer or person for the  
29 taxable year under article nine, nine-A, twenty-two[, ~~thirty-two~~] or  
30 thirty-three of this chapter, and provide such other information related  
31 to such disclosure as prescribed by the commissioner. Such disclosure  
32 shall be made notwithstanding that one member of an affiliated group, as  
33 defined by section fifteen hundred four of the internal revenue code,  
34 may file such disclosure statement with the internal revenue service on  
35 behalf of its affiliates including such taxpayer or person.

36 (2) Every taxpayer or such person who participates in a New York  
37 reportable transaction for a taxable year must disclose such partic-  
38 ipation with its return or report required to be filed under article  
39 nine, nine-A, twenty-two[, ~~thirty-two~~] or thirty-three of this chapter  
40 for the taxable year in a form prescribed by the commissioner, and  
41 provide such other information related to such transaction as prescribed  
42 by the commissioner. A New York reportable transaction is a transaction  
43 that has the potential to be a tax avoidance transaction as determined  
44 by the commissioner.

45 (i) the list required to be maintained by such person pursuant to  
46 section six thousand one hundred twelve of the internal revenue code  
47 identifies or is required to identify a taxpayer subject to tax under  
48 article nine, nine-A, twenty-two[, ~~thirty-two~~] or thirty-three of this  
49 chapter, and

50 § 44. Subdivisions (a) and (f) of section 26 of the tax law, as added  
51 by chapter 537 of the laws of 2005, are amended to read as follows:

52 (a) Allowance of credit. A taxpayer, which is subject to tax under

53 article nine, nine-A, twenty-two[, ~~thirty-two~~] or thirty-three of this  
54 chapter and which is a qualified building owner, shall be allowed a  
55 credit against such tax. The amount of the credit allowed under this  
56 section shall equal the sum of the number of qualified security officers  
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1 providing protection to a building or buildings owned by the taxpayer  
2 multiplied by three thousand dollars. Provided, however, that in the  
3 case of a worker not so employed for a full year, such amount shall be  
4 prorated to reflect the length of such employment under regulations of  
5 the commissioner.

6 (f) Cross-references. For application of the credit provided for in  
7 this section, see the following provisions of this chapter:

8 (1) article 9: section 187-n.

9 (2) article 9-A: section [~~210~~] 210-B: subdivision [~~37~~] 21.

10 (3) article 22: section 606: subsection (ii).

11 (4) [~~article 32: section 1456: subsection (t)-~~

12 ~~(5)~~] article 33: section 1511: subdivision (x).

13 § 45. Paragraph 3 of subdivision (a) and subdivision (c) of section 28  
14 of the tax law, as added by section 2 of part V of chapter 62 of the  
15 laws of 2006, are amended to read as follows:

16 (3) No qualified production costs used by a taxpayer either as the  
17 basis for the allowance of the credit provided for under this section or  
18 used in the calculation of the credit provided for under this section  
19 shall be used by such taxpayer to claim any other credit allowed pursu-  
20 ant to this chapter.

21 Notwithstanding any provisions of this section to the contrary, a  
22 corporation or partnership, which otherwise qualifies as a qualified  
23 commercial production company, and is similar in operation and in owner-  
24 ship to a business entity or entities taxable, or previously taxable,  
25 under section one hundred eighty-three, one hundred eighty-four or one  
26 hundred eighty-five of article nine; article nine-A[, ~~article thirty~~  
27 ~~two~~] or thirty-three of this chapter or which would have been subject to  
28 tax under article twenty-three of this chapter (as such article was in  
29 effect on January first, nineteen hundred eighty) or which would have  
30 been subject to tax under article thirty-two of this chapter (as such  
31 article was in effect on December thirty-first, two thousand fourteen)  
32 or the income or losses of which is or was includable under article  
33 twenty-two of this chapter shall not be deemed a new or separate busi-  
34 ness, and therefore shall not be eligible for empire state commercial  
35 production benefits, if it was not formed for a valid business purpose,  
36 as such term is defined in clause (D) of subparagraph one of paragraph  
37 (o) of subdivision nine of section two hundred eight of this chapter and  
38 was formed solely to gain empire state commercial production credit  
39 benefits.

40 (c) Cross-references. For application of the credit provided for in  
41 this section, see the following provision of this chapter:

42 (1) article 9-A: section [~~210~~] 210-B: subdivision [~~38~~] 23.

43 (2) article 22: section 606: subsection (jj).

44 § 46. Subdivision (d) of section 28 of the tax law, as added by  
45 section 1 of part X of chapter 62 of the laws of 2006, is amended to  
46 read as follows:

47 (d) Cross-references. For application of the credit provided for in  
48 this section, see the following provisions of this chapter:

49 (1) Article 9: Section 187-c.

50 (2) Article 9-A: Section [~~210~~] 210-B, subdivision [~~38~~] 24.

51 (3) Article 22: Section 606, subsections (i) and (jj).

52 § 47. The opening paragraph of subdivision (a) and subdivisions (c)  
53 and (g) of section 31 of the tax law, the opening paragraph of subdivi-  
54 sion (a) and subdivision (g) as amended by section 7 of part G of chap-  
55 ter 61 of the laws of 2011, subdivision (c) as added by section 2 of

1 part MM of chapter 59 of the laws of 2010, are amended to read as  
2 follows:

3 General. A taxpayer subject to tax under section one hundred eighty-  
4 five, article nine-A, twenty-two[, ~~thirty-two~~] or thirty-three of this  
5 chapter shall be allowed a credit against such tax, pursuant to the  
6 provisions referenced in subdivision (g) of this section. The amount of  
7 the credit, allowable for up to ten consecutive taxable years, is the  
8 sum of the following four credit components:

9 (c) Election of credit. A taxpayer who or which is qualified to claim  
10 the excelsior investment tax credit component and is also qualified to  
11 claim the investment tax credit provided for under subdivision [~~twelve~~]  
12 one of section two hundred [~~ten,~~] ten-B or subsection (a) of section six  
13 hundred six[, ~~or subsection (i) of section fourteen hundred fifty-six~~]  
14 of this chapter, may claim either the excelsior investment tax credit  
15 component or the investment tax credit, but not both with regard to a  
16 particular piece of property. In addition, a taxpayer who or which is  
17 qualified to claim the excelsior investment tax credit component and is  
18 also qualified to claim the brownfield tangible property credit compo-  
19 nent under section twenty-one of this article, as added by chapter one  
20 of the laws of two thousand three, may claim either the excelsior  
21 investment tax credit component or such tangible property credit compo-  
22 nent, but not both with regard to a particular piece of property. The  
23 election to claim the excelsior investment tax credit component, the  
24 investment tax credit or the brownfield tangible property credit compo-  
25 nent, with regard to the same property, is irrevocable.

26 (g) Cross-references. For application of the credit provided for in  
27 this section, see the following provisions of this chapter:

- 28 (1) article 9: section 187-q.
- 29 (2) article 9-A: section [~~210~~] 210-B: subdivision [~~41~~] 31.
- 30 (3) article 22: section 606: subsection (qq).
- 31 (4) [~~article 32: section 1456: subsection (u)-~~  
32 ~~(5)~~] article 33: section 1511: subdivision (y).

33 § 48. Subdivision (d) of section 31 of the tax law, as added by  
34 section 12 of part Q of chapter 57 of the laws of 2010, is amended to  
35 read as follows:

36 (d) Cross-references. For application of the credit provided for in  
37 this section, see the following provisions of this chapter:

- 38 (1) article 9-A: section [~~210~~] 210-B: subdivision [~~41~~] 32.
- 39 (2) article 22: section 606: subsection (qq).

40 § 49. Subdivision 3 of section 34 of the tax law, as added by section  
41 2 of part Y of chapter 57 of the laws of 2010, is amended to read as  
42 follows:

43 3. (a) For application of the temporary deferral nonrefundable payout  
44 credit, see the following provisions of this chapter:

- 45 (1) Article 9: section [~~187-0~~] 187-o
- 46 (2) Article 9-A: section [~~210(41)~~] 210-B(33)
- 47 (3) Article 22: section 606 (qq)
- 48 (4) [~~Article 32: section 1456(v)-~~  
49 ~~(5)~~] Article 33: section 1511 (y)

50 (b) For application of the temporary deferral refundable payout cred-  
51 it, see the following provisions of this chapter:

- 52 (1) Article 9: section 187-p
- 53 (2) Article 9-A: section [~~210(42)~~] 210-B(34)
- 54 (3) Article 22: section 606 (rr)
- 55 (4) [~~Article 32: section 1456(w)-~~  
56 ~~(5)~~] Article 33: section 1511 (z)

1 § 50. The opening paragraph of subdivision (a), subparagraph (C) of  
2 paragraph 2 of subdivision (e), and subdivision (f) of section 35 of the  
3 tax law, as added by section 3 of part V of chapter 61 of the laws of  
4 2011, are amended to read as follows:

5 A taxpayer which is a participant or the owner of a participant in the

6 economic transformation and facility redevelopment program under article  
7 eighteen of the economic development law that is subject to tax under  
8 section one hundred eighty-five of article nine, or article nine-A,  
9 twenty-two[, ~~thirty-two~~] or thirty-three of this chapter shall be  
10 allowed the sum of following components against such tax, pursuant to  
11 the provisions referenced in subdivision (f) of this section.

12 (C) the business entity must not be substantially similar in ownership  
13 and operation to another taxpayer taxable or previously taxable under  
14 section one hundred eighty-three, one hundred eighty-four or one hundred  
15 eighty-five of article nine, former section one hundred eighty-six of  
16 this chapter or article nine-A, twenty-two[, ~~thirty-two~~] or thirty-three  
17 of this chapter or former article thirty-two of this chapter or the  
18 income or losses of which is or was includable under article twenty-two  
19 of this chapter;

20 (f) Cross-references. For application of the credits provided for in  
21 this section, see the following provisions of this chapter:

- 22 (1) section 185: section 187-r.  
23 (2) article 9-A: section [~~210(43)~~] 210-B(35).  
24 (3) article 22: section 606 (ss).  
25 (4) [~~article 32: section 1456(x)-~~  
26 ~~(5)~~] article 33: section 1511 (aa).

27 § 51. Subdivisions (a) and (e) of section 36 of the tax law, as added  
28 by section 2 of part E of chapter 56 of the laws of 2011, are amended to  
29 read as follows:

30 (a) Allowance of credit. A taxpayer subject to tax under article  
31 nine-A, twenty-two[, ~~thirty-two~~] or thirty-three of this chapter shall  
32 be allowed a credit against such tax, pursuant to the provisions refer-  
33 enced in subdivision (e) of this section. The amount of the credit,  
34 allowable for ten consecutive tax years, is equal to the amount deter-  
35 mined pursuant to section four hundred twenty-five of the economic  
36 development law.

37 (e) Cross-references. For application of the credit provided for in  
38 this section, see the following provisions of this chapter:

- 39 (1) article 9-A: section [~~210~~] 210-B, subdivision [~~44~~] 37;  
40 (2) article 22: section 606, subsection (tt);  
41 (3) [~~article 32: section 1456, subsection (y)-~~  
42 ~~(4)~~] article 33, section 1511, subdivision (bb).

43 § 52. Subdivision (c) of section 37 of the tax law, as added by chap-  
44 ter 109 of the laws of 2012, is amended to read as follows:

45 (c) Cross-references. For application of the credit provided for in  
46 this section, see the following provisions of this chapter:

- 47 (1) Article 9-A: Section [~~210~~] 210-B, subdivision [~~45~~] 39.  
48 (2) Article 22: Section 606, subsections (i) and (uu).

49 § 52-a. Subdivision (c) of section 39 of the tax law is REPEALED.

50 § 53. Paragraphs 2, 3 and 4 of subdivision (k) of section 39 of the  
51 tax law, paragraphs 2 and 3 as added by section 2 of part A of chapter  
52 68 of the laws of 2013, paragraph 4 as added by section 2 of part A of  
53 chapter 68 of the laws of 2013, are amended to read as follows:

- 54 [~~(2) Article 9: section 180, subdivision 3.~~  
55 ~~(3) Article 9: section 181, subdivision 3.~~]

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1 (4) Article 9-A: section [~~210~~] 210-B, subdivision [~~47~~] 41 and subdivi-  
2 sion 44.

3 § 54. Subdivision 1 of section 171-a of the tax law, as amended by  
4 section 1 of part R of chapter 60 of the laws of 2004, is amended to  
5 read as follows:

6 1. All taxes, interest, penalties and fees collected or received by  
7 the commissioner or the commissioner's duly authorized agent under arti-  
8 cles nine (except section one hundred eighty-two-a thereof and except as  
9 otherwise provided in section two hundred five thereof), nine-A,  
10 twelve-A (except as otherwise provided in section two hundred eighty-  
11 four-d thereof), thirteen, thirteen-A (except as otherwise provided in



12 section three hundred twelve thereof), eighteen, nineteen, twenty  
13 (except as otherwise provided in section four hundred eighty-two there-  
14 of), twenty-one, twenty-two, twenty-six, twenty-six-B, twenty-eight  
15 (except as otherwise provided in section eleven hundred two or eleven  
16 hundred three thereof), twenty-eight-A, thirty-one (except as otherwise  
17 provided in section fourteen hundred twenty-one thereof), [~~thirty-two,~~  
18 thirty-three and thirty-three-A of this chapter shall be deposited daily  
19 in one account with such responsible banks, banking houses or trust  
20 companies as may be designated by the comptroller, to the credit of the  
21 comptroller. Such an account may be established in one or more of such  
22 depositories. Such deposits shall be kept separate and apart from all  
23 other money in the possession of the comptroller. The comptroller shall  
24 require adequate security from all such depositories. Of the total  
25 revenue collected or received under such articles of this chapter, the  
26 comptroller shall retain in the comptroller's hands such amount as the  
27 commissioner may determine to be necessary for refunds or reimbursements  
28 under such articles of this chapter [~~and article ten thereof~~] out of  
29 which amount the comptroller shall pay any refunds or reimbursements to  
30 which taxpayers shall be entitled under the provisions of such articles  
31 of this chapter [~~and article ten thereof~~]. The commissioner and the  
32 comptroller shall maintain a system of accounts showing the amount of  
33 revenue collected or received from each of the taxes imposed by such  
34 articles. The comptroller, after reserving the amount to pay such  
35 refunds or reimbursements, shall, on or before the tenth day of each  
36 month, pay into the state treasury to the credit of the general fund all  
37 revenue deposited under this section during the preceding calendar month  
38 and remaining to the comptroller's credit on the last day of such  
39 preceding month, (i) except that the comptroller shall pay to the state  
40 department of social services that amount of overpayments of tax imposed  
41 by article twenty-two of this chapter and the interest on such amount  
42 which is certified to the comptroller by the commissioner as the amount  
43 to be credited against past-due support pursuant to subdivision six of  
44 section one hundred seventy-one-c of this [~~chapter~~] article, (ii) and  
45 except that the comptroller shall pay to the New York state higher  
46 education services corporation and the state university of New York or  
47 the city university of New York respectively that amount of overpayments  
48 of tax imposed by article twenty-two of this chapter and the interest on  
49 such amount which is certified to the comptroller by the commissioner as  
50 the amount to be credited against the amount of defaults in repayment of  
51 guaranteed student loans and state university loans or city university  
52 loans pursuant to subdivision five of section one hundred seventy-one-d  
53 and subdivision six of section one hundred seventy-one-e of this [~~chap-~~  
54 ~~ter~~] article, (iii) and except further that, notwithstanding any law,  
55 the comptroller shall credit to the revenue arrearage account, pursuant  
56 to section ninety-one-a of the state finance law, that amount of over-  
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1 payment of tax imposed by article nine, nine-A, twenty-two, thirty,  
2 thirty-A, thirty-B[~~, thirty-two~~] or thirty-three of this chapter, and  
3 any interest thereon, which is certified to the comptroller by the  
4 commissioner as the amount to be credited against a past-due legally  
5 enforceable debt owed to a state agency pursuant to paragraph (a) of  
6 subdivision six of section one hundred seventy-one-f of this article,  
7 provided, however, he shall credit to the special offset fiduciary  
8 account, pursuant to section ninety-one-c of the state finance law, any  
9 such amount creditable as a liability as set forth in paragraph (b) of  
10 subdivision six of section one hundred seventy-one-f of this article,  
11 (iv) and except further that the comptroller shall pay to the city of  
12 New York that amount of overpayment of tax imposed by article nine,  
13 nine-A, twenty-two, thirty, thirty-A, thirty-B[~~, thirty-two,~~] or thir-  
14 ty-three of this chapter and any interest thereon that is certified to  
15 the comptroller by the commissioner as the amount to be credited against  
16 city of New York tax warrant judgment debt pursuant to section one

17 hundred seventy-one-l of this article, (v) and except further that the  
18 comptroller shall pay to a non-obligated spouse that amount of overpay-  
19 ment of tax imposed by article twenty-two of this chapter and the inter-  
20 est on such amount which has been credited pursuant to section one  
21 hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-  
22 one-e, one hundred seventy-one-f or one hundred seventy-one-l of this  
23 article and which is certified to the comptroller by the commissioner as  
24 the amount due such non-obligated spouse pursuant to paragraph six of  
25 subsection (b) of section six hundred fifty-one of this chapter; and  
26 (vi) the comptroller shall deduct a like amount which the comptroller  
27 shall pay into the treasury to the credit of the general fund from  
28 amounts subsequently payable to the department of social services, the  
29 state university of New York, the city university of New York, or the  
30 higher education services corporation, or the revenue arrearage account  
31 or special offset fiduciary account pursuant to section ninety-one-a or  
32 ninety-one-c of the state finance law, as the case may be, whichever had  
33 been credited the amount originally withheld from such overpayment, and  
34 (vii) with respect to amounts originally withheld from such overpayment  
35 pursuant to section one hundred seventy-one-l of this article and paid  
36 to the city of New York, the comptroller shall collect a like amount  
37 from the city of New York.

38 § 55. Subdivision 2 of section 171-a of the tax law, as amended by  
39 chapter 57 of the laws of 1993, is amended to read as follows:

40 2. Notwithstanding subdivision one of this section or any other  
41 provision of law to the contrary, the taxes imposed pursuant to sections  
42 one hundred eighty-three-a, one hundred eighty-four-a, [~~one hundred~~  
43 ~~eighty-six-b,~~] one hundred eighty-six-c, [~~one hundred eighty-nine-a,~~  
44 ~~two hundred nine-B[, fourteen hundred fifty-five-b]~~] and fifteen hundred  
45 five-a of this chapter, reduced by an amount for administrative costs,  
46 shall be deposited to the credit of the metropolitan mass transportation  
47 operating assistance account in the mass transportation operating  
48 assistance fund, created pursuant to section eighty-eight-a of the state  
49 finance law, as such taxes are received. The amount for administrative  
50 costs shall be determined by the commissioner to represent reasonable  
51 costs of the department of taxation and finance in administering,  
52 collecting, determining and distributing such taxes. Of the total reven-  
53 ue collected or received under such sections of this chapter, the comp-  
54 troller shall retain in his hands such amount as the commissioner may  
55 determine to be necessary for refunds or reimbursements under such  
56 sections of this chapter out of which amount the comptroller shall pay  
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1 any refunds or reimbursements to which taxpayers shall be entitled under  
2 provisions of such sections. The tax commissioner and the comptroller  
3 shall maintain a system of accounts showing the amount of revenue  
4 collected or received from each of the taxes imposed by such sections.

5 § 56. Paragraphs (b) and (c) of subdivision 1 of section 171-f of the  
6 tax law, as amended by chapter 81 of the laws of 1995, are amended to  
7 read as follows:

8 (b) "taxpayer" shall mean a corporation, association, company, part-  
9 nership, estate, trust, liquidator, fiduciary or other entity or indi-  
10 vidual who or which is liable for any tax or other imposition imposed by  
11 or pursuant to article nine, nine-A, twenty-two, thirty, thirty-A, thir-  
12 ty-B[~~, thirty-two,~~] or thirty-three of this chapter or article two-E of  
13 the general city law, which tax or other imposition is administered by  
14 the commissioner of taxation and finance, or who or which is under a  
15 duty to perform an act under or pursuant to such tax or imposition,  
16 excluding a state agency, a municipal corporation or a district corpo-  
17 ration; and (c) "overpayment" shall mean an overpayment which has been  
18 requested or determined to be refunded, a refund or a reimbursement, of  
19 a tax or other imposition imposed by or pursuant to article nine,  
20 nine-A, twenty-two, thirty, thirty-A, thirty-B[~~, thirty-two,~~] or thir-  
21 ty-three of this chapter or article two-E of the general city law, which

22 is administered by the commissioner of taxation and finance.

23 § 57. Subdivision 2 of section 171-f of the tax law, as added by chap-  
24 ter 55 of the laws of 1992, is amended to read as follows:

25 (2) The commissioner of taxation and finance, upon agreement with the  
26 state comptroller and acting as an agent for the state comptroller,  
27 shall set forth the procedures for crediting any overpayment by a  
28 taxpayer of any tax or other imposition imposed by or authorized to be  
29 imposed pursuant to article nine, nine-A, twenty-two, thirty, thirty-A,  
30 thirty-B[, ~~thirty-two,~~] or thirty-three of this chapter or article two-E  
31 of the general city law, which is administered by the commissioner of  
32 taxation and finance, and the interest on any such overpayments, against  
33 the amount of a past-due legally enforceable debt owed by such taxpayer  
34 to a state agency. An implementation plan shall be developed by the  
35 division of the budget and the department of taxation and finance which  
36 shall provide, but not be limited to, guidance with respect to coordi-  
37 nation of debt collection pursuant to this section and subdivision twen-  
38 ty-seventh of section one hundred seventy-one of this article. This  
39 section shall not be deemed to abrogate or limit in any way the powers  
40 and authority of the state comptroller to set off debts owed the state  
41 against payments from the state, under the constitution of the state or  
42 any other law.

43 § 58. Paragraphs (a) and (b) of subdivision 1 of section 171-1 of the  
44 tax law, as added by section 6 of part R of chapter 60 of the laws of  
45 2004, are amended to read as follows:

46 (a) "taxpayer" shall mean a corporation, association, company, part-  
47 nership, estate, trust, liquidator, fiduciary or other entity or indi-  
48 vidual who or which is liable for any tax or other imposition imposed by  
49 or pursuant to article nine, nine-A, twenty-two, thirty, thirty-A, thir-  
50 ty-B[, ~~thirty-two,~~] or thirty-three of this chapter, which tax or other  
51 imposition is administered by the commissioner of taxation and finance,  
52 or who or which is under a duty to perform an act under or pursuant to  
53 such tax or imposition, excluding a state agency, a municipal corpo-  
54 ration or a district corporation;

55 (b) "overpayment" shall mean an overpayment which has been requested  
56 or determined to be refunded, a refund or a reimbursement, of a tax or  
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1 other imposition imposed by or pursuant to article nine, nine-A, twen-  
2 ty-two, thirty, thirty-A, thirty-B[, ~~thirty-two,~~] or thirty-three of  
3 this chapter, which is administered by the commissioner of taxation and  
4 finance; and

5 § 59. Paragraph (b) of subdivision 1 of section 183 of the tax law, as  
6 amended by section 1 of part Y of chapter 63 of the laws of 2000, is  
7 amended to read as follows:

8 (b) For the privilege of exercising its corporate franchise, or of  
9 doing business, or of employing capital, or of owning or leasing proper-  
10 ty in this state in a corporate or organized capacity, or of maintaining  
11 an office in this state, every domestic corporation, joint-stock company  
12 or association formed for or principally engaged in the conduct of  
13 canal, steamboat, ferry (except a ferry company operating between any of  
14 the boroughs of the city of New York under a lease granted by the city),  
15 express, navigation, pipe line, transfer, baggage express, omnibus,  
16 taxicab, telegraph, or telephone business, or formed for or principally  
17 engaged in the conduct of two or more of such businesses, and every  
18 domestic corporation, joint-stock company or association formed for or  
19 principally engaged in the conduct of a railroad, palace car, sleeping  
20 car or trucking business or formed for or principally engaged in the  
21 conduct of two or more of such businesses and which has made an election  
22 pursuant to subdivision ten of this section, and every other domestic  
23 corporation, joint-stock company or association principally engaged in  
24 the conduct of a transportation or transmission business, except a  
25 corporation, joint-stock company or association formed for or principal-  
26 ly engaged in the conduct of a railroad, palace car, sleeping car or

27 trucking business or formed for or principally engaged in the conduct of  
28 two or more of such businesses and which has not made the election  
29 provided for in subdivision ten of this section, and except a corpo-  
30 ration, joint-stock company or association principally engaged in the  
31 conduct of aviation (including air freight forwarders acting as princi-  
32 pal and like indirect air carriers) and except a corporation principally  
33 engaged in providing telecommunication services between aircraft and  
34 dispatcher, aircraft and air traffic control or ground station and  
35 ground station (or any combination of the foregoing), at least ninety  
36 percent of the voting stock of which corporation is owned, directly or  
37 indirectly, by air carriers and which corporation's principal function  
38 is to fulfill the requirements of (i) the federal aviation adminis-  
39 tration (or the successor thereto) or (ii) the international civil  
40 aviation organization (or the successor thereto), relating to the exist-  
41 ence of a communication system between aircraft and dispatcher, aircraft  
42 and air traffic control or ground station and ground station (or any  
43 combination of the foregoing) for the purposes of air safety and naviga-  
44 tion [~~and except a corporation, joint-stock company or association~~  
45 ~~subject to taxation under article thirty-two of this chapter,~~] shall  
46 pay, in advance, an annual tax to be computed upon the basis of the  
47 amount of its capital stock within this state during the preceding year,  
48 and upon each dollar of such amount. Provided, however, a corporation,  
49 joint-stock company or association formed for or principally engaged in  
50 the transportation, transmission or distribution of gas, electricity or  
51 steam shall not be subject to tax under this section or section one  
52 hundred eighty-four of this article.

53 § 60. Subdivision 10 of section 183 of the tax law, as added by chap-  
54 ter 309 of the laws of 1996, is amended to read as follows:

55 10. Election. [~~With respect to taxable years beginning after nineteen~~  
56 ~~hundred ninety-seven, every~~] Every corporation, joint-stock company or  
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1 association formed for or principally engaged in the conduct of a rail-  
2 road (including surface railroad, whether or not operated by steam,  
3 subway railroad or elevated railroad), palace car, sleeping car or  
4 trucking business or formed for or principally engaged in the conduct of  
5 two or more of such businesses, which would be subject to article nine-A  
6 [~~or thirty-two~~] of this chapter if the election provided for under this  
7 subdivision were not made, may elect to be subject to the provisions of  
8 this section and, as applicable, section one hundred eighty-four of this  
9 article, rather than the provisions of such article nine-A [~~or thirty-~~  
10 ~~two~~]. [~~In the case of such a corporation, joint-stock company or associ-~~  
11 ~~ation subject to the tax imposed under this section and, as applicable,~~  
12 ~~section one hundred eighty-four of this article, for the taxable year~~  
13 ~~ending December thirty-first, nineteen hundred ninety-seven, such corpo-~~  
14 ~~ration, joint-stock company or association must make such election on or~~  
15 ~~before March fifteenth, nineteen hundred ninety-eight, and such election~~  
16 ~~shall apply to the taxable year ending on December thirty-first, nine-~~  
17 ~~teen hundred ninety-eight and to succeeding taxable years, until~~  
18 ~~revoked. In the case of such a corporation, joint-stock company or asso-~~  
19 ~~ciation which is not subject to the tax imposed under this section and,~~  
20 ~~as applicable, section one hundred eighty-four of this article for the~~  
21 ~~taxable year ending December thirty-first, nineteen hundred ninety-sev-~~  
22 ~~en, but thereafter would be subject to article nine-A or thirty-two of~~  
23 ~~this chapter if the election provided for under this subdivision were~~  
24 ~~not made, such~~] Such corporation, joint-stock company or association  
25 must make such election by the first day on which such corporation,  
26 joint-stock company or association would be required to file a return or  
27 report (without regard to extensions) under this section or section one  
28 hundred eighty-four of this article, or section one hundred eighty-  
29 three-a or one hundred[-]eighty-four-a of this article, or article  
30 nine-A [~~or thirty-two~~] of this chapter. An election made pursuant to  
31 this subdivision shall continue to be in effect until revoked by the

32 taxpayer. A revocation of the election to be subject to this section  
33 and, as applicable, section one hundred eighty-four of this article,  
34 shall be irrevocable. Such election, and a revocation thereof, shall be  
35 made in the manner prescribed by the commissioner, whether by regulation  
36 or otherwise. Such revocation shall apply as of the first day of January  
37 next following the end of a taxable year with respect to which the  
38 taxpayer had been subject to this section and, as applicable, section  
39 one hundred eighty-four of this article, by reason of an election made  
40 pursuant to this subdivision.

41 § 61. The section heading and subdivisions 1 and 5 of section 183-a of  
42 the tax law, the section heading as added by chapter 931 of the laws of  
43 1982, subdivision 1 as amended by section 1 of part A of chapter 59 of  
44 the laws of 2013 and subdivision 5 as amended by chapter 945 of the laws  
45 of 1990, are amended to read as follows:

46 ~~[Temporary metropolitan]~~ Metropolitan transportation business tax  
47 surcharge on transportation and transmission corporations and associ-  
48 ations. 1. The term "corporation" as used in this section shall include  
49 an association, within the meaning of paragraph three of subsection (a)  
50 of section seventy-seven hundred one of the internal revenue code  
51 (including a limited liability company), a publicly traded partnership  
52 treated as a corporation for purposes of the internal revenue code  
53 pursuant to section seventy-seven hundred four thereof and any business  
54 conducted by a trustee or trustees wherein interest or ownership is  
55 evidenced by certificates or other written instruments. Every corpo-  
56 ration, joint-stock company or association formed for or principally  
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1 engaged in the conduct of canal, steamboat, ferry (except a ferry compa-  
2 ny operating between any of the boroughs of the city of New York under a  
3 lease granted by the city), express, navigation, pipe line, transfer,  
4 baggage express, omnibus, taxicab, telegraph, or telephone business, or  
5 formed for or principally engaged in the conduct of two or more such  
6 businesses, and every corporation, joint-stock company or association  
7 formed for or principally engaged in the conduct of a railroad, palace  
8 car, sleeping car or trucking business or formed for or principally  
9 engaged in the conduct of two or more of such businesses and which has  
10 made an election pursuant to subdivision ten of section one hundred  
11 eighty-three of this article, and every other corporation, joint-stock  
12 company or association principally engaged in the conduct of a transpor-  
13 tation or transmission business, except a corporation, joint-stock  
14 company or association formed for or principally engaged in the conduct  
15 of a railroad, palace car, sleeping car or trucking business or formed  
16 for or principally engaged in the conduct of two or more of such busi-  
17 nesses and which has not made the election provided for in subdivision  
18 ten of section one hundred eighty-three of this article, and except a  
19 corporation, joint-stock company or association principally engaged in  
20 the conduct of aviation (including air freight forwarders acting as  
21 principal and like indirect air carriers) and except a corporation prin-  
22 cipally engaged in providing telecommunication services between aircraft  
23 and dispatcher, aircraft and air traffic control or ground station and  
24 ground station (or any combination of the foregoing), at least ninety  
25 percent of the voting stock of which corporation is owned, directly or  
26 indirectly, by air carriers and which corporation's principal function  
27 is to fulfill the requirements of (i) the federal aviation adminis-  
28 tration (or the successor thereto) or (ii) the international civil  
29 aviation organization (or the successor thereto), relating to the exist-  
30 ence of a communication system between aircraft and dispatcher, aircraft  
31 and air traffic control or ground station and ground station (or any  
32 combination of the foregoing) for the purposes of air safety and naviga-  
33 tion ~~[and except a corporation, joint-stock company or association which  
34 is liable to taxation under article thirty-two of this chapter]~~, shall  
35 pay for the privilege of exercising its corporate franchise, or of doing  
36 business, or of employing capital, or of owning or leasing property in

37 the metropolitan commuter transportation district in such corporate or  
38 organized capacity, or of maintaining an office in such district, a tax  
39 surcharge [~~for all or any part of its years commencing on or after Janu-~~  
40 ~~ary first, nineteen hundred eighty-two but ending before December thir-~~  
41 ~~ty-first, two thousand eighteen~~], which tax surcharge, in addition to  
42 the tax imposed by section one hundred eighty-three of this article,  
43 shall be computed at the rate of [~~eighteen percent of the tax imposed~~  
44 ~~under such section one hundred eighty-three for such years or any part~~  
45 ~~of such years ending before December thirty-first, nineteen hundred~~  
46 ~~eighty-three after the deduction of any credits otherwise allowable~~  
47 ~~under this article, and at the rate of~~] seventeen percent of the tax  
48 imposed under such section for such years or any part of such years  
49 [~~ending on or after December thirty-first, nineteen hundred eighty-~~  
50 ~~three~~] after the deduction of any credits otherwise allowable under this  
51 article; provided, however, that such rates of tax surcharge shall be  
52 applied only to that portion of the tax imposed under section one  
53 hundred eighty-three of this article after the deduction of any credits  
54 otherwise allowable under this article which is attributable to the  
55 taxpayer's business activity carried on within the metropolitan commuter  
56 transportation district as so determined in the manner prescribed by the  
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1 rules and regulations promulgated by the commissioner[~~; and provided,~~  
2 ~~further, that the tax surcharge imposed by this section shall not be~~  
3 ~~imposed upon any taxpayer for more than four hundred thirty-two months~~].

4 5. [~~The report covering the tax surcharge which must be calculated~~  
5 ~~pursuant to this section based upon the tax reportable on the report due~~  
6 ~~by March fifteenth, nineteen hundred eighty-two under section one~~  
7 ~~hundred eighty-three of this article shall be filed on or before March~~  
8 ~~fifteenth, nineteen hundred eighty-three. The report covering the tax~~  
9 ~~surcharge which must be calculated pursuant to this section based upon~~  
10 ~~the tax reportable on the report due by March fifteenth, nineteen~~  
11 ~~hundred eighty-three under section one hundred eighty-three of this~~  
12 ~~article shall be filed on or before March fifteenth, nineteen hundred~~  
13 ~~eighty-four. The report covering the tax surcharge which must be calcu-~~  
14 ~~lated pursuant to this section based upon the tax reportable on the~~  
15 ~~report due by March fifteenth, nineteen hundred eighty-four under~~  
16 ~~section one hundred eighty-three of this article shall be filed on or~~  
17 ~~before March fifteenth, nineteen hundred eighty-five. The report cover-~~  
18 ~~ing the tax surcharge which must be calculated pursuant to this section~~  
19 ~~based upon the tax reportable on the report due by March fifteenth,~~  
20 ~~nineteen hundred eighty-five under section one hundred eighty-three of~~  
21 ~~this article shall be filed on or before March fifteenth, nineteen~~  
22 ~~hundred eighty-six. The report covering the tax surcharge which must be~~  
23 ~~calculated pursuant to this section based upon the tax reportable on the~~  
24 ~~report due by March fifteenth, nineteen hundred eighty-six under section~~  
25 ~~one hundred eighty-three of this article shall be filed on or before~~  
26 ~~March fifteenth, nineteen hundred eighty-seven. The report covering the~~  
27 ~~tax surcharge which must be calculated pursuant to this section based~~  
28 ~~upon the tax reportable on the report due by March fifteenth, nineteen~~  
29 ~~hundred eighty-seven under section one hundred eighty-three of this~~  
30 ~~article shall be filed on or before March fifteenth, nineteen hundred~~  
31 ~~eighty-eight. The report covering the tax surcharge which must be calcu-~~  
32 ~~lated pursuant to this section based upon the tax reportable on the~~  
33 ~~report due by March fifteenth, nineteen hundred eighty-eight under~~  
34 ~~section one hundred eighty-three of this article shall be filed on or~~  
35 ~~before March fifteenth, nineteen hundred eighty-nine. The report cover-~~  
36 ~~ing the tax surcharge which must be calculated pursuant to this section~~  
37 ~~based upon the tax reportable on the report due by March fifteenth,~~  
38 ~~nineteen hundred eighty-nine under section one hundred eighty-three of~~  
39 ~~this article shall be filed on or before March fifteenth, nineteen~~  
40 ~~hundred ninety.~~] The report covering the tax surcharge which must be  
41 calculated pursuant to this section based upon the tax reportable on the

42 report due by March fifteenth of any year [~~subsequent to nineteen~~  
43 ~~hundred eighty-nine~~] under section one hundred eighty-three of this  
44 article shall be filed on or before March fifteenth of the year next  
45 succeeding such year. An extension pursuant to section one hundred nine-  
46 ty-three of this article shall be allowed only if a taxpayer files with  
47 the commissioner an application for extension in such form as said  
48 commissioner may prescribe by regulation and pays on or before the date  
49 of such filing in addition to any other amounts required under this  
50 article, either ninety percent of the entire tax surcharge required to  
51 be paid under this section for the applicable period, or not less than  
52 the tax surcharge shown on the taxpayer's report for the preceding year,  
53 if such preceding year consisted of twelve months. The tax surcharge  
54 imposed by this section shall be payable to the commissioner in full at  
55 the time the report is required to be filed, and such tax surcharge or  
56 the balance thereof, imposed on any taxpayer which ceases to exercise  
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1 its franchise or be subject to the tax surcharge imposed by this section  
2 shall be payable to the commissioner at the time the report is required  
3 to be filed, provided such tax surcharge of a domestic corporation which  
4 continues to possess its franchise shall be subject to adjustment as the  
5 circumstances may require; all other tax surcharges of any such taxpay-  
6 er, which pursuant to the foregoing provisions of this section would  
7 otherwise be payable subsequent to the time such report is required to  
8 be filed, shall nevertheless be payable at such time. All of the  
9 provisions of this article presently applicable to section one hundred  
10 eighty-three of this article are applicable to the tax surcharge imposed  
11 by this section except for section one hundred ninety-two of this arti-  
12 cle.

13 § 62. Subdivision 1 of section 184 of the tax law, as amended by  
14 section 2 of part Y of chapter 63 of the laws of 2000, is amended to  
15 read as follows:

16 1. The term "corporation" as used in this section shall include an  
17 association, within the meaning of paragraph three of subsection (a) of  
18 section seventy-seven hundred one of the internal revenue code (includ-  
19 ing a limited liability company), a publicly traded partnership treated  
20 as a corporation for purposes of the internal revenue code pursuant to  
21 section seventy-seven hundred four thereof.

22 Every corporation, joint-stock company or association formed for or  
23 principally engaged in the conduct of canal, steamboat, ferry (except a  
24 ferry company operating between any of the boroughs of the city of New  
25 York under a lease granted by the city), express, navigation, pipe line,  
26 transfer, baggage express, omnibus, taxicab, telegraph or local tele-  
27 phone business, or formed for or principally engaged in the conduct of  
28 two or more of such businesses, and every corporation, joint-stock  
29 company or association formed for or principally engaged in the conduct  
30 of surface railroad, whether or not operated by steam, subway railroad,  
31 elevated railroad, palace car, sleeping car or trucking business or  
32 formed for or principally engaged in the conduct of two or more such  
33 businesses and which has made an election pursuant to subdivision ten of  
34 section one hundred eighty-three of this article, and every other corpo-  
35 ration, joint-stock company or association formed for or principally  
36 engaged in the conduct of a transportation or transmission business  
37 (other than a telephone business), except a corporation, joint-stock  
38 company or association formed for or principally engaged in the conduct  
39 of a surface railroad, whether or not operated by steam, subway rail-  
40 road, elevated railroad, palace car, sleeping car or trucking business  
41 or formed for or principally engaged in the conduct of two or more of  
42 such businesses and which has not made the election provided for in  
43 subdivision ten of section one hundred eighty-three of this article,  
44 and, except a corporation, joint-stock company or association principal-  
45 ly engaged in the conduct of aviation (including air freight forwarders  
46 acting as principal and like indirect air carriers) and except a corpo-



47 ration principally engaged in providing telecommunication services  
48 between aircraft and dispatcher, aircraft and air traffic control or  
49 ground station and ground station (or any combination of the foregoing),  
50 at least ninety percent of the voting stock of which corporation is  
51 owned, directly or indirectly, by air carriers and which corporation's  
52 principal function is to fulfill the requirements of (i) the federal  
53 aviation administration (or the successor thereto) or (ii) the interna-  
54 tional civil aviation organization (or the successor thereto), relating  
55 to the existence of a communication system between aircraft and  
56 dispatcher, aircraft and air traffic control or ground station and  
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1 ground station (or any combination of the foregoing) for the purposes of  
2 air safety and navigation and [~~except a corporation, joint-stock company~~  
3 ~~or association which is liable to taxation under article thirty-two of~~  
4 ~~this chapter,~~] for the privilege of exercising its corporate franchise,  
5 or of doing business, or of employing capital, or of owning or leasing  
6 property in this state in a corporate or organized capacity, or main-  
7 taining an office in this state, shall pay a franchise tax which shall  
8 be equal to [~~(i) three-quarters of one percent for taxable years ending~~  
9 ~~before two thousand one, provided that for a taxable year ending in two~~  
10 ~~thousand the rate shall be reduced to three-eighths of one percent~~  
11 ~~effective July first, two thousand with the result that for purposes of~~  
12 ~~implementation of such change in rate the applicable rate for such a~~  
13 ~~year shall be nine-sixteenths of one percent, and (ii)] three-eighths of  
14 one percent for taxable years commencing after two thousand, upon its  
15 gross earnings from all sources within this state; except that, [~~for~~  
16 ~~taxable years commencing on or after January first, nineteen hundred~~  
17 ~~eighty-five and ending on or before December thirty-first, nineteen~~  
18 ~~hundred eighty-nine, every corporation, joint-stock company or associ-~~  
19 ~~ation formed for or principally engaged in the conduct of telephone or~~  
20 ~~telegraph business shall pay a franchise tax which shall be equal to~~  
21 ~~three-tenths of one per centum upon its gross earnings from all sources~~  
22 ~~within this state and,~~] for taxable years commencing on or after January  
23 first, nineteen hundred ninety, every corporation, joint-stock company  
24 or association formed for or principally engaged in the conduct of local  
25 telephone business, or telegraph business shall pay a franchise tax  
26 which shall be equal to [~~(i) three-quarters of one percent for taxable~~  
27 ~~years ending before two thousand one, provided that for a taxable year~~  
28 ~~ending in two thousand the rate shall be reduced to three eighths of one~~  
29 ~~percent effective July first, two thousand with the result that for~~  
30 ~~purposes of implementation of such change in rate the applicable rate~~  
31 ~~for such a year shall be nine-sixteenths of one percent, and (ii)]  
32 three-eighths of one percent for taxable years commencing after two  
33 thousand, upon its gross earnings from all sources within this state,  
34 except that a corporation, joint-stock company or association formed for  
35 or principally engaged in the conduct of a local telephone business  
36 shall exclude the following earnings (but not in any event earnings  
37 derived by such taxpayer from the provision of carrier access services)  
38 derived by such taxpayer from sales for ultimate consumption of telecom-  
39 munications service to its customers (i) thirty percent of separately  
40 charged intra-LATA toll service (which shall also include interregion  
41 regional calling plan service) and (ii) one hundred percent of separate-  
42 ly charged inter-LATA, interstate or international telecommunications  
43 service; and except that [~~corporations, joint-stock companies or associ-~~  
44 ~~ations formed for or principally engaged in the conduct of surface rail-~~  
45 ~~road, whether or not operated by steam, subway railroad, elevated rail-~~  
46 ~~road, palace car or sleeping car, business or any other corporation~~  
47 ~~formed for or principally engaged in the conduct of a railroad business,~~  
48 ~~for taxable years prior to nineteen hundred ninety-seven, and] corpo-  
49 rations, joint-stock companies or associations formed for or principally  
50 engaged in the conduct of canal, steamboat, ferry (except a ferry compa-  
51 ny operating between any of the boroughs of the city of New York under a~~~~~~

52 lease granted by the city), navigation or any corporation formed for or  
53 principally engaged in the operation of vessels, shall pay a franchise  
54 tax which shall be equal to three-quarters of one per centum upon its  
55 gross earnings from all sources within this state, excluding earnings  
56 derived from business of an interstate or foreign character; except that  
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1 for taxable years beginning in nineteen hundred ninety-seven or there-  
2 after, in the case of a corporation, joint-stock company or association  
3 which, with respect to taxable years beginning after nineteen hundred  
4 ninety-seven, has made an election pursuant to subdivision ten of  
5 section one hundred eighty-three of this article and which is formed for  
6 or principally engaged in the conduct of surface railroad, whether or  
7 not operated by steam, subway railroad, elevated railroad, palace car,  
8 sleeping car or trucking business or formed for or principally engaged  
9 in the conduct of two or more of such businesses, such corporation,  
10 joint-stock company or association shall pay a franchise tax which shall  
11 be equal to [~~(i) six-tenths of one percent for taxable years ending~~  
12 ~~before two thousand one, provided that for a taxable year ending in two~~  
13 ~~thousand the rate shall be reduced to three-eighths of one percent~~  
14 ~~effective July first, two thousand with the result that for purposes of~~  
15 ~~implementation of such change in rate the applicable rate for such a~~  
16 ~~year shall be thirty-nine eightieths of one percent, and (ii)] three-  
17 eighths of one percent for taxable years commencing after two thousand,  
18 upon its gross earnings from all sources within this state, provided  
19 that in the case of a corporation, joint-stock company or association  
20 formed for or principally engaged in the conduct of surface railroad,  
21 whether or not operated by steam, subway railroad, elevated railroad,  
22 palace car or sleeping car business, or formed for or principally  
23 engaged in the conduct of two or more of such businesses, such gross  
24 earnings shall not include earnings derived from business of an inter-  
25 state or foreign character.~~

26 Provided, however, with respect to railroad, elevated railroad, palace  
27 car or sleeping car business or any other corporation formed for or  
28 principally engaged in the conduct of a railroad business and canal,  
29 steamboat, ferry (except a ferry company operating between any of the  
30 boroughs of the city of New York under a lease granted by the city),  
31 navigation or any corporation formed for or principally engaged in the  
32 operation of vessels where the gross earnings from such transportation  
33 business both originating and terminating within this state and travers-  
34 ing both this state and another state or states or country shall be  
35 subject to the franchise tax imposed by this section (except where such  
36 corporation, joint-stock company or association is formed for or princi-  
37 pally engaged in the conduct of a railroad (including surface railroad,  
38 whether or not operated by steam, subway railroad or elevated railroad),  
39 palace car or sleeping car business or formed for or principally engaged  
40 in the conduct of two or more of such businesses, and has not made the  
41 election provided for under subdivision ten of section one hundred  
42 eighty-three of this article) and such earnings shall be allocated to  
43 this state in the same ratio that the mileage within the state bears to  
44 the total mileage of such business. Provided, further, a corporation,  
45 joint-stock company or association formed for or principally engaged in  
46 the transportation, transmission or distribution of gas, electricity or  
47 steam shall not be subject to tax under this section or section one  
48 hundred eighty-three of this article.

49 The term "local telephone business" means the provision or furnishing  
50 of telecommunication services for hire wherein the service furnished by  
51 the provider thereof consists of carrier access service or the service  
52 originates and terminates within the same local access and transport  
53 area ("LATA"), a local access and transport area being that geographic  
54 area as established and approved, and as so set and in existence on July  
55 first, nineteen hundred ninety-four, pursuant to the modification of  
56 final judgment in United States v. Western Electric Company (civil

1 action no. 82-0192) in the United States district court for the District  
2 of Columbia or within the LATA-like Rochester non-associated independent  
3 area.

4 The term "telecommunication services" shall have the meaning ascribed  
5 to such term in section one hundred eighty-six-e of this article.

6 § 63. The section heading and the opening paragraph of subdivision 1  
7 of section 184-a of the tax law, the section heading as added by chapter  
8 931 of the laws of 1982 and the opening paragraph of subdivision 1 as  
9 amended by section 2 of part A of chapter 59 of the laws of 2013, are  
10 amended to read as follows:

11 Additional [~~temporary~~] metropolitan transportation business tax  
12 surcharge on transportation and transmission corporations and associ-  
13 ations services.

14 The term "corporation" as used in this section shall include an asso-  
15 ciation, within the meaning of paragraph three of subsection (a) of  
16 section seventy-seven hundred one of the internal revenue code (includ-  
17 ing a limited liability company), and a publicly traded partnership  
18 treated as a corporation for purposes of the internal revenue code  
19 pursuant to section seventy-seven hundred four thereof. Every corpo-  
20 ration, joint-stock company or association formed for or principally  
21 engaged in the conduct of canal, steamboat, ferry (except a ferry compa-  
22 ny operating between any of the boroughs of the city of New York under a  
23 lease granted by the city), express, navigation, pipe line, transfer,  
24 baggage express, omnibus, taxicab, telegraph or local telephone busi-  
25 ness, or formed for or principally engaged in the conduct of two or more  
26 such businesses, and every corporation, joint-stock company or associ-  
27 ation formed for or principally engaged in the conduct of a surface  
28 railroad, whether or not operated by steam, subway railroad, elevated  
29 railroad, palace car, sleeping car or trucking business or principally  
30 engaged in the conduct of two or more such businesses and which has made  
31 an election pursuant to subdivision ten of section one hundred eighty-  
32 three of this article, and every other corporation, joint-stock company  
33 or association formed for or principally engaged in the conduct of a  
34 transportation or transmission business (other than a telephone busi-  
35 ness) except a corporation, joint-stock company or association formed  
36 for or principally engaged in the conduct of a surface railroad, whether  
37 or not operated by steam, subway railroad, elevated railroad, palace  
38 car, sleeping car or trucking business or principally engaged in the  
39 conduct of two or more such businesses and which has not made the  
40 election provided for in subdivision ten of section one hundred eighty-  
41 three of this article, and except a corporation, joint-stock company or  
42 association principally engaged in the conduct of aviation (including  
43 air freight forwarders acting as principal and like indirect air carri-  
44 ers) and except a corporation principally engaged in providing telecom-  
45 munication services between aircraft and dispatcher, aircraft and air  
46 traffic control or ground station and ground station (or any combination  
47 of the foregoing), at least ninety percent of the voting stock of which  
48 corporation is owned, directly or indirectly, by air carriers and which  
49 corporation's principal function is to fulfill the requirements of (i)  
50 the federal aviation administration (or the successor thereto) or (ii)  
51 the international civil aviation organization (or the successor there-  
52 to), relating to the existence of a communication system between  
53 aircraft and dispatcher, aircraft and air traffic control or ground  
54 station and ground station (or any combination of the foregoing) for the  
55 purposes of air safety and navigation [~~and except a corporation, joint-  
56 stock company or association which is liable to taxation under article~~  
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1 ~~thirty-two of this chapter~~], shall pay for the privilege of exercising  
2 its corporate franchise, or of doing business, or of employing capital,  
3 or of owning or leasing property in the metropolitan commuter transpor-

4 tation district in such corporate or organized capacity, or of maintain-  
5 ing an office in such district, a tax surcharge [~~for all or any part of~~  
6 ~~its taxable years commencing on or after January first, nineteen hundred~~  
7 ~~eighty-two, but ending before December thirty-first, two thousand eigh-~~  
8 ~~teen)], which tax surcharge, in addition to the tax imposed by section  
9 one hundred eighty-four of this article, shall be computed at the rate  
10 of [~~eighteen percent of the tax imposed under such section one hundred~~  
11 ~~eighty-four for such taxable years or any part of such taxable years~~  
12 ~~ending before December thirty-first, nineteen hundred eighty-three after~~  
13 ~~the deduction of any credits otherwise allowable under this article, and~~  
14 ~~at the rate of]~~ seventeen percent of the tax imposed under such section  
15 for such taxable years or any part of such taxable years [~~ending on or~~  
16 ~~after December thirty-first, nineteen hundred eighty-three]~~ after the  
17 deduction of any credits otherwise allowable under this article;  
18 provided, however, that such rates of tax surcharge shall be applied  
19 only to that portion of the tax imposed under section one hundred eight-  
20 y-four of this article after the deduction of any credits otherwise  
21 allowable under this article which is attributable to the taxpayer's  
22 business activity carried on within the metropolitan commuter transpor-  
23 tation district[~~; and provided, further, that the tax surcharge imposed~~  
24 ~~by this section on corporations, joint-stock companies and associations~~  
25 ~~formed for or principally engaged in the conduct of telephone or tele-~~  
26 ~~graph business shall be computed in accordance with this subdivision and~~  
27 ~~paragraph (c) of subdivision two of this section as if the three quar-~~  
28 ~~ters of one percent rate of tax provided for in subdivision one of~~  
29 ~~section one hundred eighty-four of this article were applicable to such~~  
30 ~~telephone and telegraph businesses for taxable years commencing on or~~  
31 ~~after January first, nineteen hundred eighty-five and ending on or~~  
32 ~~before December thirty-first, nineteen hundred eighty-nine; and~~  
33 ~~provided, further, that the tax surcharge imposed by this section shall~~  
34 ~~not be imposed upon any taxpayer for more than four hundred thirty-two~~  
35 ~~months]. Provided, however, that for taxable years beginning in two  
36 thousand and thereafter, for purposes of this subdivision the tax  
37 imposed under section one hundred eighty-four of this article shall be  
38 deemed to have been imposed at the rate of three-quarters of one  
39 percent, except that in the case of a corporation, joint-stock company  
40 or association which has made an election pursuant to subdivision ten of  
41 section one hundred eighty-three of this article, for purposes of this  
42 subdivision the tax imposed under section one hundred eighty-four of  
43 this article shall be deemed to have been imposed at the rate of six-  
44 tenths of one percent.~~~~

45 § 64. Subdivision 8 of section 186-a of the tax law is REPEALED.

46 § 65. The section heading and subdivision 1 of section 186-c of the  
47 tax law, the section heading as amended by chapter 2 of the laws of  
48 1995, subdivision 1 as amended by section 3 of part II-1 of chapter 57  
49 of the laws of 2008, subparagraph 1 of paragraph (a) of subdivision 1 as  
50 amended by section 3 of part A of chapter 59 of the laws of 2013, are  
51 amended to read as follows:

52 [~~Temporary metropolitan~~] Metropolitan transportation business tax  
53 surcharge on utility services and excise tax on sale of telecommuni-  
54 cation services. 1. (a) (1) Every utility doing business in the metro-  
55 politan commuter transportation district shall pay a tax surcharge, in  
56 addition to the tax imposed by section one hundred eighty-six-a of this  
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1 article[~~, for all or any parts of its taxable years commencing on or~~  
2 ~~after January first, nineteen hundred eighty-two but ending before~~  
3 ~~December thirty-first, two thousand eighteen], to be computed [at the  
4 ~~rate of eighteen percent of the tax imposed under section one hundred~~  
5 ~~eighty-six-a of this article for such taxable years or any part of such~~  
6 ~~taxable years ending before December thirty-first, nineteen hundred~~  
7 ~~eighty-three after the deduction of any credits otherwise allowable~~  
8 ~~under this article, and] at the rate of seventeen percent of the tax~~~~

9 imposed under such section [~~for such taxable years or any part of such~~  
10 ~~taxable years ending on or after December thirty-first, nineteen hundred~~  
11 ~~eighty-three~~] after the deduction of credits otherwise allowable under  
12 this article except any utility credit provided for by article thir-  
13 teen-A of this chapter; provided, however, that such rates of tax  
14 surcharge shall be applied only to that portion of the tax imposed under  
15 section one hundred eighty-six-a of this article after the deduction of  
16 credits otherwise allowable under this article, except any utility cred-  
17 it provided for by article thirteen-A of this chapter, which is attrib-  
18 utable to the taxpayer's gross income or gross operating income from  
19 business activity carried on within the metropolitan commuter transpor-  
20 tation district[~~; and provided, further, that the tax surcharge imposed~~  
21 ~~by this section shall not be imposed upon any taxpayer for more than~~  
22 ~~four hundred thirty-two months~~].

23 (2) Provided however, that [~~commencing January first, two thousand,~~  
24 in the case of the tax imposed under paragraph (a) of subdivision one of  
25 section one hundred eighty-six-a of this article (relating to providers  
26 of telecommunications services) such tax surcharge shall be calculated  
27 as if the tax imposed under section one hundred eighty-six-a of this  
28 article were imposed at a rate of three and one-half percent.

29 (b) In addition to the surcharge imposed by paragraph (a) of this  
30 subdivision, there is hereby imposed a surcharge on the gross receipts  
31 from telecommunication services relating to the metropolitan commuter  
32 transportation district at the rate of seventeen percent of the state  
33 tax rate under section one hundred eighty-six-e of this article [~~for all~~  
34 ~~or part of taxable years commencing on and after January first, nineteen~~  
35 ~~hundred ninety-five but ending before December thirty-first, two thou-~~  
36 ~~sand thirteen~~]. All the definitions and other provisions of section one  
37 hundred eighty-six-e of this article shall apply to the tax imposed by  
38 this paragraph with such modification and limitation as may be necessary  
39 (including substituting the words "metropolitan commuter transportation  
40 district" for "state" where appropriate) in order to adapt the language  
41 of such section one hundred eighty-six-e of this article to the  
42 surcharge imposed by this paragraph within such metropolitan commuter  
43 transportation district so as to include (1) any intra-district telecom-  
44 munication services, except any telecommunication services the gross  
45 receipts from which are subject to tax under subparagraph four of this  
46 paragraph, (2) any inter-district telecommunication services which orig-  
47 inate or terminate in such district and are charged to a service address  
48 therein regardless of where the amounts charged for such services are  
49 billed or ultimately paid, except any telecommunications services the  
50 gross receipts from which are subject to tax under subparagraph four of  
51 this paragraph, (3) as apportioned to such district, private telecommu-  
52 nication services, except any telecommunication services the gross  
53 receipts from which are subject to tax under subparagraph four of this  
54 paragraph, and (4) mobile telecommunications service provided by a home  
55 service provider where the place of primary use is within such metropol-  
56 itan commuter transportation district. Provided however, [~~commencing~~  
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1 ~~October first, nineteen hundred ninety-eight~~] such tax surcharge shall  
2 be calculated as if the tax imposed under section one hundred eighty-  
3 six-e of this article were imposed at a rate of three and one-half  
4 percent.

5 § 66. Clause (iii) of subparagraph (D) of paragraph 3 of subsection  
6 (b) of section 605 of the tax law, as added by chapter 658 of the laws  
7 of 2003, is amended to read as follows:

8 (iii) Provided further, that for the purposes of item (I) of clause  
9 (i) of this subparagraph, a trustee which is a banking corporation as  
10 defined in subsection (a) of section fourteen hundred fifty-two of this  
11 chapter, as such section was in effect on December thirty-first, two  
12 thousand fourteen, and which is domiciled outside the state of New York  
13 at the time it becomes a trustee of the trust shall be deemed to contin-



15	<del>(iv) Empire zone capital tax</del>	<del>Qualified investments and</del>
16	<del>credit under subsection (l)</del>	<del>contributions under subdivision</del>
17		<del>twenty of section two hundred ten</del>
18		<del>or subsection (d) of section</del>
19		<del>fourteen hundred fifty-six]</del>
20	(v) Agricultural property tax	Allowable school district property
21	credit under subsection (n)	taxes under subdivision
22		[ <del>twenty-two</del> <u>eleven</u> of
23		section two hundred [ <del>ten</del> ]
24		<u>ten-B</u>
25	(vi) Credit for employment of	Qualified first-year wages or
26	persons with disabilities	qualified second-year wages under
27	under subsection (o)	subdivision [ <del>twenty-three</del> <u>twelve</u>
28		of section two hundred [ <del>ten or</del>
29		<del>subsection (f) of section</del>
30		<del>fourteen hundred fifty-six]</del> <u>ten-B</u>
31	(vii) Employment incentive credit	Applicable investment credit base
32	under subsection (a-1)	under subdivision [ <del>twelve-D</del> <u>two</u>
33		of section two hundred [ <del>ten</del> ]
34		<u>ten-B</u>
35	(viii) Empire zone employment	Applicable investment credit
36	incentive credit under subsection	under subdivision [ <del>twelve-C</del>
37	(j-1)	<u>four</u> of section
38		two hundred [ <del>ten</del> ] <u>ten-B</u>
39	(ix) Alternative fuels	Amount of credit under subdivision
40	and electric vehicle	[ <del>twenty-four</del> <u>thirty</u> of section
41	recharging property	two hundred [ <del>ten</del> ] <u>ten-B</u>
42	credit under subsection (p)	
43	(x) Qualified emerging technology	Applicable credit base under
44	company employment credit under	subdivision [ <del>twelve-E</del> <u>seven</u>
45	subsection (q)	of section two hundred [ <del>ten</del> ] <u>ten-B</u>
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1	(xi) Qualified emerging technology	Qualified investments under
2	company capital tax credit under	subdivision [ <del>twelve-F</del> <u>eight</u>
3	subsection (r)	of section two hundred [ <del>ten</del> ] <u>ten-B</u>
4	(xii) Credit for purchase of an	Cost of an automated external
5	automated external defibrillator	defibrillator under subdivision
6	under subsection (s)	[ <del>twenty-five</del> <u>thirteen</u> of section
7		two hundred [ <del>ten or subsection</del>
8		<del>(j) of section fourteen hundred</del>
9		<del>fifty-six]</del> <u>ten-B</u>
10	(xiii) Low-income housing credit	Credit amount under subdivision
11	under subsection (x)	[ <del>thirty</del> <u>fifteen</u> of section
12		two hundred [ <del>ten or subsection</del>
13		<del>(l) of section fourteen</del>
14		<del>hundred fifty-six]</del> <u>ten-B</u>
15	<del>[(xiv) Credit for transportation</del>	<del>For taxable years beginning</del>
16	<del>improvement contributions under</del>	<del>before January first, two thousand</del>
17	<del>subsection (z)</del>	<del>nine, amount of credit under</del>
18		<del>subdivision thirty-two of</del>
19		<del>section two hundred ten</del>
20		<del>or subsection (n) of section</del>
21		<del>fourteen hundred fifty-six]</del>



22	(xv) QEZE credit for real property	Amount of credit under subdivision
23	taxes under subsection (bb)	[ <del>twenty-seven</del> ] <u>five</u> of
24		section two hundred [ <del>ten</del>
25		<del>or subsection (o) of section</del>
26		<del>fourteen hundred fifty-six</del> ]
27		<u>ten-B</u>
28	(xvi) QEZE tax reduction credit	Amount of benefit period factor,
29	under subsection (cc)	employment increase factor and zone
30		allocation factor (without regard
31		to pro ration) under subdivision
32		[ <del>twenty-eight</del> ] <u>six</u> of
33		section two hundred [ <del>ten</del>
34		<del>or subsection (p) of section</del>
35		<del>fourteen hundred fifty-six</del> ]
36		<u>ten-B</u> and amount
37		of tax factor as determined under
38		subdivision (f) of section sixteen
39	(xvii) Green building credit under	Amount of green building credit
40	subsection (y)	under subdivision [ <del>thirty-one</del>
41		<u>sixteen</u> of section two
42		hundred [ <del>ten or subsection (m)</del>
43		<del>of section fourteen hundred</del>
44		<del>fifty-six</del> ] <u>ten-B</u>
45	(xviii) Credit for long-term care	Qualified costs under subdivision
46	insurance premiums under subsection	[ <del>twenty-five-a</del> ] <u>fourteen</u>
47	(aa)	of section two hundred [ <del>ten</del>
48		<del>or subsection (k) of</del>
49		<del>section fourteen hundred fifty-six</del> ]
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1		<u>ten-B</u>
2	(xix) Brownfield redevelopment	Amount of credit under subdivision
3	credit under subsection (dd)	[ <del>thirty-three</del> ] <u>seventeen</u>
4		of section two hundred
5		[ <del>ten or subsection (q) of section</del>
6		<del>fourteen hundred fifty-six</del> ]
7		<u>ten-B</u>
8	(xx) Remediated brownfield credit	Amount of credit under subdivision
9	for real property taxes for	[ <del>thirty-four</del> ] <u>eighteen</u>
10	qualified sites under subsection	of section two hundred
11	(ee)	[ <del>ten of subsection (r) of section</del>
12		<del>fourteen hundred fifty-six</del> ]
13		<u>ten-B</u>
14	(xxi) Environmental remediation	Amount of credit under subdivision
15	insurance credit under subsection	[ <del>thirty-five</del> ] <u>nineteen</u>
16	(ff)	of section two hundred
17		[ <del>ten or subsection (s) of section</del>
18		<del>fourteen hundred fifty-six</del> ]
19		<u>ten-B</u>
20	(xxii) Empire state film	Amount of credit for qualified
21	production credit under	production costs in production of a
22	subsection (gg)	qualified film under subdivision
23		[ <del>thirty-six</del> ] <u>twenty</u> of
24		section two hundred [ <del>ten</del> ] <u>ten-B</u>

25 [~~(xxiii) Qualified emerging~~ ~~Qualifying expenditures and~~  
26 ~~technology company facilities,~~ ~~development activities under~~  
27 ~~operations and training credit~~ ~~subdivision twelve G of section two~~  
28 ~~under subsection (nn)~~ ~~hundred ten~~]

29 (xxiv) Security training tax credit Amount of credit under subdivision  
30 under subsection (ii) [~~thirty-seven~~ twenty-one  
31 of section two hundred  
32 [~~ten or under subsection (t) of~~  
33 ~~section fourteen hundred fifty-six~~]  
34 ten-B

35 [~~(xxv) Credit for qualified fuel~~ ~~For taxable years beginning before~~  
36 ~~cell electric generating~~ ~~January first, two thousand nine,~~  
37 ~~equipment expenditures~~ ~~amount of credit under subdivision~~  
38 ~~under subsection (g-2)~~ ~~thirty-seven of section two hundred~~  
39 ~~ten or subsection (t) of section~~  
40 ~~fourteen hundred fifty-six~~]

41 (xxvi) Empire state commercial Amount of credit for qualified  
42 production credit under subsection production costs in production of  
43 (jj) a qualified commercial under  
44 subdivision [~~thirty-eight~~  
45 twenty-three of  
46 section two hundred [~~ten~~]  
47 ten-B

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1 (xxvii) Biofuel production tax Amount of credit under subdivision  
2 credit under subsection (jj) [~~thirty-eight~~ twenty-four  
3 of section two hundred [~~ten~~]  
4 ten-B

5 (xxviii) Clean heating fuel credit Amount of credit under subdivision  
6 under subsection (mm) [~~thirty-nine~~ twenty-five of  
7 section two hundred [~~ten~~]  
8 ten-B

9 (xxix) Credit for rehabilitation Amount of credit under subdivision  
10 of historic properties under [~~forty~~ twenty-six of  
11 subsection (oo) section two hundred [~~ten~~]  
12 ten-B

13 (xxx) Excelsior jobs program tax Amount of credit under subdivision  
14 credit under subsection (qq) [~~forty-one~~ thirty-one of  
15 section two hundred [~~ten~~  
16 ~~or under subsection (u) of~~  
17 ~~section fourteen hundred fifty-six~~]  
18 ten-B

19 (xxxi) Empire state film Amount of credit for  
20 post production credit under qualified post production  
21 subsection (qq) costs of a qualified film  
22 under subdivision [~~forty-one~~  
23 thirty-two of section  
24 two hundred [~~ten~~] ten-B

25 (xxxii) Economic transformation Amount of credit under subdivision  
26 and facility redevelopment credit [~~forty-three~~ thirty-five  
27 of section [~~210 or under~~  
28 ~~subsection (x) of section fourteen~~  
29 ~~hundred fifty-six~~] two hundred  
30 ten-B

31	(xxxiii) New York youth works	Amount of credit under
32	tax credit	subdivision [ <del>forty-four</del> <u>thirty-six</u>
33		of section two hundred [ <del>ten</del>
34		<u>ten-B</u>
35	(xxxiii) Empire state jobs	Amount of credit under
36	retention program credit	subdivision [ <del>forty-four</del>
37		<u>thirty-seven</u> of section
38		two hundred [ <del>ten or under</del>
39		<del>subsection (y) of section</del>
40		<del>fourteen hundred fifty-six]</del>
41		<u>ten-B</u>
42	(xxxiii) Credit for companies who	Amount of credit under
43	provide transportation to	subdivision [ <del>forty-four</del>
44	individuals with disabilities	<u>thirty-eight</u> of section
45	under subsection (tt)	two hundred [ <del>ten</del> <u>ten-B</u>
46	(xxxiv) Beer production credit	Amount of credit under
47	under subsection (uu)	[ <del>subdivision</del> subdivision
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1		[ <del>forty-five</del> <u>thirty-nine</u> of
2		section two hundred [ <del>ten</del>
3		<u>ten-B</u>
4	(xxxv) Hire a vet credit	Amount of credit under subdivision
5	under subsection (a-2)	[ <del>twenty-three-a</del> <u>twenty-nine</u>
6		of section two hundred [ <del>ten</del>
7		<del>or subsection (e-1) of</del>
8		<del>of section fourteen hundred</del>
9		<del>fifty-six] <u>ten-B</u></del>
10	(xxxv) Minimum wage reimbursement	Amount of credit under subdivision
11	credit under subsection (aaa)	[ <del>forty-six</del> <u>forty</u>
12		of section two hundred
13		[ <del>ten or subsection (z) of</del>
14		<del>section fourteen hundred</del>
15		<del>fifty-six] <u>ten-B</u></del>
16	(xxxvi) Tax-free NY area tax	Amount of credit under
17	elimination credit	subdivision [ <del>forty-seven</del> <u>forty-one</u>
18		of section two hundred [ <del>ten</del>
19		<u>ten-B</u>
20	<u>(xxxvii) Real property tax</u>	<u>Amount of credit under</u>
21	<u>credit for manufacturers</u>	<u>subdivision</u>
22	<u>under subsection (xx)</u>	<u>forty-three of section</u>
23		<u>two hundred ten-B</u>
24	<u>(xxxviii) Tax-free NY area</u>	<u>Amount of credit under</u>
25	<u>excise tax on</u>	<u>subdivision</u>
26	<u>telecommunications services</u>	<u>forty-four of section</u>
27	<u>credit under subsection (yy)</u>	<u>two hundred ten-B</u>

28 § 69. Subparagraphs (A) and (B) of paragraph 3 of subsection (i) of  
29 section 606 of the tax law, as added by chapter 170 of the laws of 1994,  
30 are amended to read as follows:

31 (A) Credit carryover. Any excess credit under subparagraph (A) of  
32 paragraph one of this subsection, as it was in effect for taxable years  
33 beginning before nineteen hundred ninety-four, may be carried over to  
34 the shareholder's following year or years and may be deducted from such

35 shareholder's tax for such year or years, except that any excess credit  
36 attributable to subdivision [~~twelve~~] one of section two hundred [~~ten~~]  
37 ten-B of this chapter shall in no event be carried over beyond the ten  
38 taxable years next following the taxable year of origin.

39 (B) Credit recapture. Any redetermination of credit required by this  
40 subsection as it was in effect for taxable years beginning before nine-  
41 teen hundred ninety-four, upon disposition or cessation of qualified use  
42 of property pursuant to paragraph [~~(g)~~] (e) of subdivision [~~twelve~~] one,  
43 or paragraph (f) of subdivision [~~twelve-B or paragraph (f) of subdivi-~~  
44 ~~sion eighteen~~] three of section two hundred [~~ten~~] ten-B of this chapter  
45 shall be attributed in pro rata shares to the shareholders who were  
46 allowed credit under this subsection with respect to such property, and  
47 the reduction of a shareholder's proportionate stock interest shall be  
48 treated as a disposition of property for which a redetermination of  
49 credit under such paragraphs is required with respect to such sharehold-  
50 er.

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1 § 70. Subparagraph (B) of paragraph 3 and paragraph 21 of subsection  
2 (b) and paragraph 21 of subsection (c) of section 612 of the tax law,  
3 subparagraph (B) of paragraph 3 of subsection (b) as amended by section  
4 57, paragraph 21 of subsection (b) as amended by section 59 and para-  
5 graph 21 of subsection (c) as amended by section 60 of part A of chapter  
6 389 of the laws of 1997, are amended to read as follows:

7 (B) Shareholders of S corporations. In the case of a shareholder of an  
8 S corporation, with respect to taxes imposed upon or payable by the  
9 corporation, the term "income taxes" in subparagraph (A) of this para-  
10 graph shall also include the taxes imposed under [~~articles~~] article  
11 nine-A [~~and thirty-two~~] of this chapter, regardless of the measure of  
12 such tax, but shall not otherwise include taxes imposed by this or any  
13 other state of the United States, or any political subdivision of this  
14 or any other state, or the District of Columbia.

15 (21) In relation to the disposition of stock or indebtedness of a  
16 corporation which elected under subchapter s of chapter one of the  
17 internal revenue code for any taxable year of such corporation begin-  
18 ning, in the case of a corporation taxable under article nine-A of this  
19 chapter, after December thirty-first, nineteen hundred eighty, [~~and in~~  
20 ~~the case of a corporation taxable under article thirty-two of this chap-~~  
21 ~~ter, after December thirty-first, nineteen hundred ninety-six,~~] the  
22 amount required to be added to federal adjusted gross income pursuant to  
23 subsection (n) of this section.

24 (21) In relation to the disposition of stock or indebtedness of a  
25 corporation which elected under subchapter s of chapter one of the  
26 internal revenue code for any taxable year of such corporation begin-  
27 ning, in the case of a corporation taxable under article nine-A of this  
28 chapter, after December thirty-first, nineteen hundred eighty, [~~and in~~  
29 ~~the case of a corporation taxable under article thirty-two of this chap-~~  
30 ~~ter, after December thirty-first, nineteen hundred ninety-six,~~] the  
31 amounts required to be subtracted from federal adjusted gross income  
32 pursuant to subsection (n) of this section.

33 § 71. Paragraph 2 of subsection (a) of section 632 of the tax law, as  
34 amended by section 2 of part C of chapter 57 of the laws of 2010, is  
35 amended to read as follows:

36 (2) In determining New York source income of a nonresident shareholder  
37 of an S corporation where the election provided for in subsection (a) of  
38 section six hundred sixty of this article is in effect, there shall be  
39 included only the portion derived from or connected with New York sourc-  
40 es of such shareholder's pro rata share of items of S corporation  
41 income, loss and deduction entering into his federal adjusted gross  
42 income, increased by reductions for taxes described in paragraphs two  
43 and three of subsection (f) of section thirteen hundred sixty-six of the  
44 internal revenue code, as such portion shall be determined under regu-  
45 lations of the commissioner consistent with the applicable methods and

46 rules for allocation under article nine-A [~~or thirty-two~~] of this chap-  
47 ter, regardless of whether or not such item or reduction is included in  
48 entire net income under article nine-A [~~or thirty-two~~] for the tax year.  
49 If a nonresident is a shareholder in an S corporation where the election  
50 provided for in subsection (a) of section six hundred sixty of this  
51 article is in effect, and the S corporation has distributed an install-  
52 ment obligation under section 453(h)(1)(A) of the Internal Revenue Code,  
53 then any gain recognized on the receipt of payments from the installment  
54 obligation for federal income tax purposes will be treated as New York  
55 source income allocated in a manner consistent with the applicable meth-  
56 ods and rules for allocation under article nine-A [~~or thirty-two~~] of  
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1 this chapter in the year that the assets were sold. In addition, if the  
2 shareholders of the S corporation have made an election under section  
3 338(h)(10) of the Internal Revenue Code, then any gain recognized on the  
4 deemed asset sale for federal income tax purposes will be treated as New  
5 York source income allocated in a manner consistent with the applicable  
6 methods and rules for allocation under article nine-A [~~or thirty-two~~] of  
7 this chapter in the year that the shareholder made the section  
8 338(h)(10) election. For purposes of a section 338(h)(10) election, when  
9 a nonresident shareholder exchanges his or her S corporation stock as  
10 part of the deemed liquidation, any gain or loss recognized shall be  
11 treated as the disposition of an intangible asset and will not increase  
12 or offset any gain recognized on the deemed assets sale as a result of  
13 the section 338(h)(10) election.

14 § 72. Subparagraph (A) of paragraph 4 of subsection (c) of section 658  
15 of the tax law, as amended by section 1 of part DD of chapter 686 of the  
16 laws of 2003, is amended to read as follows:

17 (A) General. Every entity which is a partnership, other than a public-  
18 ly traded partnership as defined in section 7704 of the federal Internal  
19 Revenue Code, subchapter K limited liability company or an S corporation  
20 for which the election provided for in subsection (a) of section six  
21 hundred sixty of this [~~article~~] part is in effect, which has partners,  
22 members or shareholders who are nonresident individuals, as defined  
23 under subsection (b) of section six hundred five of this article, or C  
24 corporations, and which has any income derived from New York sources,  
25 determined in accordance with the applicable rules of section six  
26 hundred thirty-one of this article as in the case of a nonresident indi-  
27 vidual, shall pay estimated tax on such income on behalf of such part-  
28 ners, members or shareholders in the manner and at the times prescribed  
29 by subsection (c) of section six hundred eighty-five of this article.  
30 For purposes of this paragraph, the term "estimated tax" shall mean a  
31 partner's, member's or shareholder's distributive share or pro rata  
32 share of the entity income derived from New York sources, multiplied by  
33 the highest rate of tax prescribed by section six hundred one of this  
34 article for the taxable year of any partner, member or shareholder who  
35 is an individual taxpayer, or paragraph (a) of subdivision one of  
36 section two hundred ten of this chapter for the taxable year of any  
37 partner, member or shareholder which is a C corporation, whether or not  
38 such C corporation is subject to tax under article nine, nine-A[~~, thir-~~  
39 ~~ty-two,~~] or thirty-three of this chapter, and reduced by the distribu-  
40 tive share or pro rata share of any credits determined under section one  
41 hundred eighty-seven, one hundred eighty-seven-a, six hundred six[~~,~~  
42 ~~fourteen hundred fifty-six~~] or fifteen hundred eleven of this chapter,  
43 whichever is applicable, derived from the entity.

44 § 73. Subsections (a) and (h) of section 660 of the tax law,  
45 subsection (a) as amended by section 50 and subsection (h) as amended by  
46 section 66 of part A of chapter 389 of the laws of 1997, are amended to  
47 read as follows:

48 (a) Election. If a corporation is an eligible S corporation, the  
49 shareholders of the corporation may elect in the manner set forth in  
50 subsection (b) of this section to take into account, to the extent

51 provided for in this article (or in article thirteen of this chapter, in  
52 the case of a shareholder which is a taxpayer under such article), the S  
53 corporation items of income, loss, deduction and reductions for taxes  
54 described in paragraphs two and three of subsection (f) of section thir-  
55 teen hundred sixty-six of the internal revenue code which are taken into  
56 account for federal income tax purposes for the taxable year. No  
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1 election under this subsection shall be effective unless all sharehold-  
2 ers of the corporation have so elected. An eligible S corporation is (i)  
3 an S corporation which is subject to tax under article nine-A [~~or thir-~~  
4 ~~ty-two~~] of this chapter, or (ii) an S corporation which is the parent of  
5 a qualified subchapter S subsidiary subject to tax under article nine-A,  
6 where the shareholders of such parent corporation are entitled to make  
7 the election under this subsection by reason of subparagraph three of  
8 paragraph (k) of subdivision nine of section two hundred eight of this  
9 chapter[~~; or (iii) an S corporation which is the parent of a qualified~~  
10 ~~subchapter S corporation subject to tax under article thirty-two, where~~  
11 ~~the shareholders of such parent are entitled to make the election under~~  
12 ~~this subsection by reason of paragraph three of subsection (e) of~~  
13 ~~section fourteen hundred fifty-three of this chapter~~].

14 (h) Cross reference. For definitions relating to S corporations, see  
15 subdivision one-A of section two hundred eight [~~and subsections (f) and~~  
16 ~~(g) of section fourteen hundred fifty~~] of this chapter.

17 § 74. Paragraph 1 of subsection (i) of section 660 of the tax law, as  
18 added by section 1 of part L of chapter 60 of the laws of 2007, is  
19 amended to read as follows:

20 (1) Notwithstanding the provisions in subsection (a) of this section,  
21 in the case of an eligible S corporation for which the election under  
22 subsection (a) of this section is not in effect for the current taxable  
23 year, the shareholders of an eligible S corporation are deemed to have  
24 made that election effective for the eligible S corporation's entire  
25 current taxable year, if the eligible S corporation's investment income  
26 for the current taxable year is more than fifty percent of its federal  
27 gross income for such year [~~provided that this subsection shall not~~  
28 ~~apply to an eligible S corporation that is subject to tax under article~~  
29 ~~thirty-two of this chapter~~]. In determining an eligible S corporation's  
30 investment income, the investment income of a qualified subchapter S  
31 subsidiary owned directly or indirectly by the eligible S corporation  
32 shall be included.

33 § 75. Paragraph 3 of subsection (c) of section 1085 of the tax law, as  
34 amended by section 15 of part Y of chapter 63 of the laws of 2000, is  
35 amended to read as follows:

36 (3) The provisions of this subsection and subsections (d) and (e) of  
37 this section shall apply to the failure of a taxpayer to file a declara-  
38 tion of estimated tax surcharge or the failure to pay all or any part of  
39 an amount which is applied as an installment against such estimated tax  
40 surcharge pursuant to sections one hundred ninety-seven-a, one hundred  
41 ninety-seven-b, two hundred thirteen-a, two hundred thirteen-b, [~~four-~~  
42 ~~teen hundred sixty, fourteen hundred sixty-one,~~] fifteen hundred thir-  
43 teen and fifteen hundred fourteen of this chapter. For purposes of  
44 applying this section and subsections (d) and (e) of this section to the  
45 estimated tax surcharge, where appropriate the term "tax" shall be read  
46 to mean "tax surcharge," and the terms "amount required to be paid,"  
47 "amount which would be required to be paid," and "amount which would  
48 have been required to be paid" shall be computed as the product of (1)  
49 such amount computed without regard to the tax surcharges imposed under  
50 sections one hundred eighty-four-a, one hundred eighty-six-c, one  
51 hundred eighty-eight, two hundred nine-A, two hundred nine-B, [~~fourteen~~  
52 ~~hundred fifty-five-A, fourteen hundred fifty-five-B,~~] fifteen hundred  
53 five-a, and fifteen hundred twenty of this chapter, and (2) the MTA  
54 percentage. The term "MTA percentage" shall mean the product of (A) the  
55 tax rate applicable under such sections imposing such surcharges and (B)

1 business activity carried on within the metropolitan commuter transpor-  
2 tation district under such sections.

3 § 76. The opening paragraph of subparagraph (A) of paragraph 3 of  
4 subsection (d) of section 1085 of the tax law, as amended by chapter 170  
5 of the laws of 1994, is amended to read as follows:

6 An amount equal to ninety-one percent of the tax for the taxable year  
7 computed on all items entering into the computation of the tax or taxes  
8 of the taxpayer for the taxable year under article nine, nine-A[~~, thir-~~  
9 ~~ty-two~~] or thirty-three of this chapter. For purposes of computing the  
10 tax, all items of receipts, income and expenses shall be placed on an  
11 annualized basis--

12 § 77. Clause (i) of subparagraph (A) of paragraph 4 of subsection (d)  
13 of section 1085 of the tax law, as amended by chapter 57 of the laws of  
14 1993, is amended to read as follows:

15 (i) take the items entering into the computation of the tax or taxes  
16 of the taxpayer for the taxable year under article nine, nine-A[~~, thir-~~  
17 ~~ty-two~~] or thirty-three of this chapter, for all months during the taxa-  
18 ble year preceding the filing month,

19 § 78. Paragraph 5 of subsection (d) of section 1085 of the tax law, as  
20 added by chapter 61 of the laws of 1989, is amended to read as follows:

21 (5) In the case of any declaration installment, any reduction in such  
22 installment resulting from the application of paragraph three or four of  
23 this subsection shall be recaptured by increasing the amount of the next  
24 installment determined under paragraph one or two of this subsection or  
25 paragraph one of subsection (c) of this section by the amount of such  
26 reduction (and by increasing subsequent installments to the extent that  
27 the reduction has not previously been recaptured under this paragraph).  
28 For purposes of the preceding sentence, a declaration installment means  
29 any installment of estimated tax other than the mandatory first install-  
30 ment required under paragraph (a) of subdivision one of section one  
31 hundred ninety-seven-b, subdivision (a) of section two hundred thir-  
32 teen-b[~~, subsection (a) of section fourteen hundred sixty-one~~] or subdi-  
33 vision (a) of section fifteen hundred fourteen of this chapter.

34 § 79. Paragraph 1 of subsection (e) of section 1085 of the tax law, as  
35 amended by section 28-p of part H-3 of chapter 62 of the laws of 2003,  
36 is amended to read as follows:

37 (1) Paragraphs (1) and (2) of subsection (d) of this section shall not  
38 apply in the case of any corporation (or any predecessor corporation)  
39 which had [~~entire net~~] business income, or the portion thereof allocated  
40 within the state, of one million dollars or more for any taxable year  
41 during the three taxable years immediately preceding the taxable year  
42 involved; provided, however, that in the case of a corporation subject  
43 to tax under section fifteen hundred two-a of this chapter, paragraphs  
44 (1) and (2) of subsection (d) of this section shall not apply if such  
45 corporation had entire net income, or the portion thereof allocated  
46 within the state, of one million dollars or more for any of the three  
47 taxable years immediately preceding the taxable year involved, or if the  
48 direct premiums subject to tax under section fifteen hundred two-a of  
49 this chapter of the corporation for any of such three preceding taxable  
50 years beginning on or after January first, two thousand three equals or  
51 exceeds three million seven hundred fifty thousand dollars.

52 § 80. Subsections (m) and (o) of section 1085 of the tax law are  
53 REPEALED.

54 § 81. Clause (ii) of subparagraph (B) of paragraph 2 of subsection  
55 (q), paragraph 3 of subsection (s) and the closing paragraph of para-  
56 graph 1 of subsection (t) of section 1085 of the tax law, as added by  
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1 section 10 of part N of chapter 61 of the laws of 2005, are amended to  
2 read as follows:



3 (ii) fifty percent of the gross income that the organizer or material  
4 advisor derived with respect to activities that were the basis for the  
5 requirement to file, disclose or provide information pursuant to section  
6 six thousand eleven of the internal revenue code, to the extent such  
7 gross income is attributable to the avoidance of any tax imposed under  
8 article nine, nine-A[, ~~thirty-two~~,] or thirty-three of this chapter.

9 (3) For purposes of this subsection, the term "understatement of  
10 liability" means any understatement of the net amount payable with  
11 respect to any tax imposed under article nine, nine-A[, ~~thirty-two~~,] or  
12 thirty-three of this chapter or any overstatement of the net amount  
13 creditable or refundable with respect to any such tax.

14 shall pay, with respect to each activity described in subparagraph (A)  
15 of this paragraph, a penalty equal to one thousand dollars or, if the  
16 person establishes that it is lesser, one hundred percent of the gross  
17 income derived (or to be derived) by such person from such activity to  
18 the extent such gross income is attributed to the avoidance of any tax  
19 imposed under articles nine, nine-A[, ~~thirty-two~~] or thirty-three of  
20 this chapter; provided, however, that if an activity with respect to  
21 which a penalty imposed under this subsection involves a statement  
22 described in clause (i) of subparagraph (B) of paragraph one of this  
23 subsection, the penalty shall be equal to fifty percent of the gross  
24 income derived (or to be derived) from that activity within the state by  
25 the person on which the penalty is imposed. For purposes of the preced-  
26 ing sentence, activities described in clause (i) of subparagraph (A) of  
27 this paragraph with respect to each entity or arrangement shall be  
28 treated as a separate activity and participation in each sale described  
29 in clause (ii) of subparagraph (A) of this paragraph shall be so treat-  
30 ed.

31 § 82. The opening paragraph of subsection (c) of section 1087 of the  
32 tax law, as separately amended by chapters 760 and 770 of the laws of  
33 1992, is amended to read as follows:

34 If a taxpayer is required by subdivision three of section two hundred  
35 eleven[, ~~subsection (e) of section fourteen hundred sixty-two~~] or para-  
36 graph one of subdivision (e) of section fifteen hundred fifteen of this  
37 chapter, to file a report or amended return in respect of (i) a decrease  
38 or increase in federal taxable income or federal alternative minimum  
39 taxable income or federal tax, or (ii) a federal change or correction or  
40 renegotiation, or computation or recomputation of tax, which is treated  
41 in the same manner as if it were an overpayment for federal income tax  
42 purposes, claim for credit or refund of any resulting overpayment of tax  
43 shall be filed by the taxpayer within two years from the time such  
44 report or amended return was required to be filed with the commissioner  
45 [~~of taxation and finance~~]. If the report or amended return required by  
46 any such provision of law is not filed within the period therein speci-  
47 fied, no interest shall be payable on any claim for credit or refund of  
48 the overpayment attributable to the federal change or correction. The  
49 amount of such credit or refund--

50 § 83. Subsection (g) of section 1088 of the tax law, as amended by  
51 chapter 61 of the laws of 1989 and relettered by chapter 55 of the laws  
52 of 1992, is amended to read as follows:

53 (g) Cross-reference.--For provision with respect to interest after  
54 failure to file a report or amended return under subdivision three of  
55 section two hundred eleven[, ~~subsection (e) of section fourteen hundred~~  
56 ~~sixty-two~~] or paragraph one of subdivision (e) of section fifteen

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1 hundred fifteen, see subsection (c) of section one thousand eighty-sev-  
2 en.

3 § 84. Paragraph 2 of subsection (b) of section 1096 of the tax law, as  
4 amended by chapter 411 of the laws of 1986, is amended to read as  
5 follows:

6 (2) The [~~tax commission~~] commissioner may take any action under para-  
7 graph one of this subdivision to inquire into the commission of an

8 offense connected with the administration or enforcement of this article  
9 or article nine, [~~nine-a~~] nine-A, thirteen, [~~thirteen-a, thirty-two,~~  
10 thirteen-A or thirty-three of this chapter, provided, however, that  
11 notwithstanding the provisions of section one hundred seventy-four of  
12 this chapter no such action shall be taken when a referral by the  
13 department or the [~~tax commission~~] commissioner to the attorney general,  
14 a district attorney or any other prosecutorial agency is in effect.  
15 Provided, however, the [~~tax commission~~] commissioner shall have power,  
16 during the period when such referral is in effect, to examine or to  
17 cause to have examined, by any agent or representative designated by it  
18 for that purpose, any books, papers, records or memoranda bearing upon  
19 the matters required to be included in the return, where such books,  
20 papers, records or memoranda are in its possession, or where such books,  
21 papers, records or memoranda are in the possession of the attorney  
22 general, district attorney or other prosecutorial agency to which such  
23 referral is made.

24 § 85. Paragraph 1 of subsection (e) of section 1096 of the tax law, as  
25 amended by section 8 of subpart D of part V1 of chapter 57 of the laws  
26 of 2009, is amended to read as follows:

27 (1) Authority to set interest rates.---The commissioner shall set the  
28 overpayment and underpayment rates of interest to be paid pursuant to  
29 sections two hundred thirteen, two hundred thirteen-b, two hundred  
30 fifty-eight, two hundred sixty-three, two hundred ninety-four, one thou-  
31 sand eighty-four, one thousand eighty-five[7] and one thousand eighty-  
32 eight[~~7, fourteen hundred sixty-one and fourteen hundred sixty-three~~] of  
33 this chapter, but if no such rate or rates of interest are set, such  
34 overpayment rate shall be deemed to be set at six percent per annum and  
35 such underpayment rate shall be deemed to be set at seven and one-half  
36 percent per annum. Such overpayment and underpayment rates shall be the  
37 rates prescribed in paragraph two of this subsection, but the underpay-  
38 ment rate shall not be less than seven and one-half percent per annum.  
39 Any such rates set by the commissioner shall apply to taxes, or any  
40 portion thereof, which remain or become due or overpaid on or after the  
41 date on which such rates become effective and shall apply only with  
42 respect to interest computed or computable for periods or portions of  
43 periods occurring in the period during which such rates are in effect.

44 § 86. Subdivision (b) of section 1201-a of the tax law, as amended by  
45 section 5 of part Y of chapter 62 of the laws of 2006, is amended to  
46 read as follows:

47 (b) Empire state film production credit. Any city in this state having  
48 a population of one million or more, acting through its local legisla-  
49 tive body, is hereby authorized to adopt and amend local laws to allow a  
50 credit against the general corporation tax and the unincorporated busi-  
51 ness tax imposed pursuant to the authority of chapter seven hundred  
52 seventy-two of the laws of nineteen hundred sixty-six which shall be  
53 substantially identical to the credit allowed under section twenty-four  
54 of this chapter, except that (A) the percentage of qualified production  
55 costs used to calculate such credit shall be five percent, (B) whenever  
56 such section twenty-four references the state, such words shall be read  
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1 as referencing the city, (C) such credit shall be allowed only to a  
2 taxpayer which is a qualified film production company, and (D) the  
3 effective date of such credit shall be July first, two thousand six.  
4 Such credit shall be applied in a manner consistent with the credit  
5 allowed under subdivision [~~thirty-six~~] twenty of section two hundred  
6 [~~ten~~] ten-B of this chapter except as may be necessary to take into  
7 account differences between the general corporation tax and the unincor-  
8 porated business tax.

9 § 87. Subdivision (c) of section 1201-a of the tax law, as amended by  
10 chapter 300 of the laws of 2007, is amended to read as follows:

11 (c) Empire state commercial production credit. Any city in this state  
12 having a population of one million or more, acting through its local

13 legislative body, is hereby authorized to adopt and amend local laws to  
14 allow a credit against the general corporation tax and the unincorporat-  
15 ed business tax imposed pursuant to the authority of chapter seven  
16 hundred seventy-two of the laws of nineteen hundred sixty-six which  
17 shall be substantially identical to the credit allowed under the  
18 provisions of section twenty-eight of this chapter, except that (A) the  
19 percentage of qualified production costs used to calculate such credit  
20 shall be five percent, (B) whenever such section twenty-eight references  
21 the state, such words shall be read as referencing the city, (C) such  
22 credit shall be allowed only to a taxpayer that is a qualified commer-  
23 cial production company, and (D) the effective date of such credit shall  
24 be as provided in local laws. Such credit shall be applied in a manner  
25 consistent with the credit allowed under subdivision [~~thirty-eight~~  
26 twenty-three] of section two hundred [~~ten~~] ten-B of this chapter except  
27 as may be necessary to take into account differences between the general  
28 corporation tax and unincorporated business tax.

29 § 88. The section heading and paragraphs 1 and 3 of subdivision (a) of  
30 section 1505-a of the tax law, the section heading as added by chapter  
31 11 of the laws of 1983 and paragraphs 1 and 3 of subdivision (a) as  
32 amended by section 6 of part A of chapter 59 of the laws of 2013, are  
33 amended to read as follows:

34 [~~Temporary metropolitan~~] Metropolitan transportation business tax  
35 surcharge on insurance corporations.

36 (1) Every domestic insurance corporation and every foreign or alien  
37 insurance corporation, and every life insurance corporation described in  
38 subdivision (b) of section fifteen hundred one of this article, for the  
39 privilege of exercising its corporate franchise, or of doing business,  
40 or of employing capital, or of owning or leasing property in the metro-  
41 politan commuter transportation district in a corporate or organized  
42 capacity, or of maintaining an office in the metropolitan commuter  
43 transportation district, [~~for all or any part of its taxable years~~  
44 ~~commencing on or after January first, nineteen hundred eighty two, but~~  
45 ~~ending before December thirty-first, two thousand eighteen,~~] except  
46 corporations specified in subdivision (c) of section fifteen hundred  
47 twelve of this article, shall annually pay, in addition to the taxes  
48 otherwise imposed by this article, a tax surcharge on the taxes imposed  
49 under this article after the deduction of any credits otherwise allow-  
50 able under this article as allocated to such district. Such taxes shall  
51 be allocated to such district for purposes of computing such tax  
52 surcharge upon taxpayers subject to tax under subdivision (b) of section  
53 fifteen hundred ten of this article by applying the methodology, proce-  
54 dures and computations set forth in subdivisions (a) and (b) of section  
55 fifteen hundred four of this article, except that references to terms  
56 denoting New York premiums, and total wages, salaries, personal service  
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1 compensation and commissions within New York shall be read as denoting  
2 within the metropolitan commuter transportation district and terms  
3 denoting total premiums and total wages, salaries, personal service  
4 compensation and commissions shall be read as denoting within the state.  
5 If it shall appear to the commissioner that the application of the meth-  
6 odology, procedures and computations set forth in such subdivisions (a)  
7 and (b) does not properly reflect the activity, business or income of a  
8 taxpayer within the metropolitan commuter transportation district, then  
9 the commissioner shall be authorized, in the commissioner's discretion,  
10 to adjust such methodology, procedures and computations for the purpose  
11 of allocating such taxes by:

- 12 (A) excluding one or more factors therein;
- 13 (B) including one or more other factors therein, such as expenses,  
14 purchases, receipts other than premiums, real property or tangible  
15 personal property; or
- 16 (C) any other similar or different method which allocates such taxes  
17 by attributing a fair and proper portion of such taxes to the metropol-

18 itan commuter transportation district. The commissioner from time to  
19 time shall publish all rulings of general public interest with respect  
20 to any application of the provisions of the preceding sentence. The  
21 commissioner may promulgate rules and regulations to further implement  
22 the provisions of this section.

23 (3) Such tax surcharge shall be computed at the rate of [~~eighteen~~  
24 ~~percent of the taxes imposed under sections fifteen hundred one and~~  
25 ~~fifteen hundred ten of this article as limited by section fifteen~~  
26 ~~hundred five of this article, as allocated to such district, for such~~  
27 ~~taxable years or any part of such taxable years ending before December~~  
28 ~~thirty-first, nineteen hundred eighty-three after the deduction of any~~  
29 ~~credits otherwise allowable under this article, at the rate of seventeen~~  
30 ~~percent of the taxes imposed under such sections as limited by section~~  
31 ~~fifteen hundred five of this article, as allocated to such district, for~~  
32 ~~such taxable years or any part of such taxable years ending on or after~~  
33 ~~December thirty-first, nineteen hundred eighty-three and before January~~  
34 ~~first, two thousand three after the deduction of any credits otherwise~~  
35 ~~allowable under this article, and at the rate of]~~ seventeen percent of  
36 the taxes imposed under sections fifteen hundred one, fifteen hundred  
37 two-a, and fifteen hundred ten of this article, as limited or otherwise  
38 determined by subdivision (a) or (b) of section fifteen hundred five of  
39 this article, as allocated to such district, [~~for such taxable years or~~  
40 ~~any part of such taxable years ending after December thirty-first, two~~  
41 ~~thousand two]~~ after the deduction of any credits otherwise allowable  
42 under this article[~~; provided, however, that the tax surcharge imposed~~  
43 ~~by this section shall not be imposed upon any taxpayer for more than~~  
44 ~~four hundred thirty-two months]. Provided however, that for taxable  
45 years commencing on or after July first, two thousand, and in the case  
46 of taxpayers subject to tax under section fifteen hundred two-a of this  
47 article, for taxable years of such taxpayers beginning on or after July  
48 first, two thousand and before January first, two thousand three, such  
49 surcharge shall be calculated as if (i) the rate of the tax computed  
50 under paragraph one of subdivision (a) of section fifteen hundred two of  
51 this article was nine percent and (ii) the rate of the limitation on tax  
52 set forth in section fifteen hundred five of this article for domestic,  
53 foreign and alien insurance corporations except life insurance corpo-  
54 rations was two and six-tenths percent.~~

55 § 89. Section 1825 of the tax law, as amended by section 2 of part E  
56 of chapter 25 of the laws of 2009, is amended to read as follows:

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1 § 1825. Violation of secrecy provisions of the tax law.--Any person  
2 who violates the provisions of subdivision (b) of section twenty-one,  
3 subdivision one of section two hundred two, subdivision eight of section  
4 two hundred eleven, subdivision (a) of section three hundred fourteen,  
5 subdivision one or two of section four hundred thirty-seven, section  
6 four hundred eighty-seven, subdivision one or two of section five  
7 hundred fourteen, subsection (e) of section six hundred ninety-seven,  
8 subsection (a) of section nine hundred ninety-four, subdivision (a) of  
9 section eleven hundred forty-six, section twelve hundred eighty-seven,  
10 subdivision (a) of section fourteen hundred eighteen, [~~subsection (a) of~~  
11 ~~section fourteen hundred sixty-seven,~~] subdivision (a) of section  
12 fifteen hundred eighteen, subdivision (a) of section fifteen hundred  
13 fifty-five of this chapter, and subdivision (e) of section 11-1797 of  
14 the administrative code of the city of New York shall be guilty of a  
15 misdemeanor.

16 § 90. Subdivisions (s) and (t) of section 957 of the general municipal  
17 law, as amended by section 1 of part S1 of chapter 57 of the laws of  
18 2009, are amended to read as follows:

19 (s) "Qualified investment project" shall mean a project (i) located  
20 within an empire zone, (ii) at which five hundred or more jobs will be  
21 created, provided such jobs are new to the state and are in addition to  
22 any other jobs previously created by the owner of such project in the

23 state, and (iii) which will consist of tangible personal property and  
24 other tangible property, including buildings and structural components  
25 of buildings, described in subparagraphs (i), (ii), (iii), (iv) and  
26 clause (A) or (C) of subparagraph (v) of paragraph (b) of subdivision  
27 [~~twelve-B~~] three of section two hundred [~~ten~~] ten-B of the tax law, the  
28 basis of which for federal income tax purposes will equal or exceed  
29 seven hundred fifty million dollars. Provided however, the owner of such  
30 project does not employ more than two hundred persons in the state at  
31 the time such project is commenced.

32 (t) "Significant capital investment project" shall mean a project (i)  
33 located within an empire zone, (ii) which will be either a newly  
34 constructed facility or a newly constructed addition to or expansion of  
35 a qualified investment project, consisting of tangible personal property  
36 and other tangible property, including buildings and structural compo-  
37 nents of buildings, described in subparagraphs (i), (ii), (iii), (iv)  
38 and clause (A) or (C) of subparagraph (v) of paragraph (b) of subdivi-  
39 sion [~~twelve-B~~] three of section two hundred [~~ten~~] ten-B of the tax law,  
40 the basis of which for federal income tax purposes will equal or exceed  
41 seven hundred fifty million dollars, (iii) which is constructed after  
42 the basis for federal income tax purposes of the property comprising  
43 such qualified investment project equals or exceeds seven hundred fifty  
44 million dollars, and (iv) at which five hundred or more jobs will be  
45 created, provided such jobs are new to the state and are in addition to  
46 any other jobs previously created by the owner of such project in the  
47 state.

48 § 91. Intentionally omitted.

49 § 92. Intentionally omitted.

50 § 93. Intentionally omitted.

51 § 94. Intentionally omitted.

52 § 95. Intentionally omitted.

53 § 96. Intentionally omitted.

54 § 97. Intentionally omitted.

55 § 98. Intentionally omitted.

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1 § 99. Notwithstanding any provisions of law to the contrary and  
2 notwithstanding the repeal of article 32 of the tax law by section one  
3 of this act, the repeal of section 180 of the tax law by section two of  
4 this act and the repeal of section 181 of the tax law by section three  
5 of this act, all provisions of such article and such sections, in  
6 respect to the imposition, exemption, assessment, payment, payment over,  
7 determination, collection, and credit or refund of tax, interest and  
8 penalty imposed thereunder, the filing of forms and returns, the preser-  
9 vation of records for the purposes of such tax, the secrecy of returns,  
10 the disposition of revenues, and the civil and criminal penalties appli-  
11 cable to the violation of the provisions of such article 32 and such  
12 sections 180 and 181, shall continue in full force and effect with  
13 respect to all such tax accrued for taxable years beginning before Janu-  
14 ary 1, 2015; and all actions and proceedings, civil or criminal,  
15 commenced or authorized to be commenced under or by virtue of any  
16 provision of such article 32 or by virtue of any provision of such  
17 section 180 or 181 so repealed, and pending or able to be commenced  
18 immediately prior to the taking effect of such repeal, may be commenced,  
19 prosecuted and defended to final effect in the same manner as they might  
20 if such provisions were not so repealed.

21 § 100. Subdivision 1 of section 187 of the tax law, as amended by  
22 chapter 2 of the laws of 1995, is amended to read as follows:

23 1. A taxpayer shall be allowed a credit, to be credited against the  
24 taxes imposed by this article, other than the taxes and fees imposed by  
25 sections [~~one hundred eighty, one hundred eighty-one,~~] one hundred  
26 eighty-six-a and one hundred eighty-six-e of this chapter. The amount of  
27 the credit shall be the amount of the special additional mortgage  
28 recording tax paid by the taxpayer pursuant to the provisions of subdi-

29 vision one-a of section two hundred fifty-three of this chapter on mort-  
30 gages recorded on and after January first, nineteen hundred seventy-  
31 nine. Provided, however, that the amount of such credit allowable  
32 against the tax imposed by section one hundred eighty-four of this chap-  
33 ter shall be the excess of the amount of such special additional mort-  
34 gage recording tax paid over the amount of any credit allowed by this  
35 section against the tax imposed by section one hundred eighty-three of  
36 this chapter. Provided further, however, no credit shall be allowed with  
37 respect to a mortgage of real property principally improved or to be  
38 improved by one or more structures containing in the aggregate not more  
39 than six residential dwelling units, each dwelling unit having its own  
40 separate cooking facilities, where the real property is located in one  
41 or more of the counties comprising the metropolitan commuter transporta-  
42 tion district and where the mortgage is recorded on or after May first,  
43 nineteen hundred eighty-seven. Provided further, however, no credit  
44 shall be allowed with respect to a mortgage of real property principally  
45 improved or to be improved by one or more structures containing in the  
46 aggregate not more than six residential dwelling units, each dwelling  
47 unit having its own separate cooking facilities, where the real property  
48 is located in the county of Erie and where the mortgage is recorded on  
49 or after May first, nineteen hundred eighty-seven.

50 § 101. Subdivision 1 of section 187-a of the tax law, as added by  
51 chapter 142 of the laws of 1997, is amended to read as follows:

52 1. Allowance of credit. A taxpayer shall be allowed a credit, to be  
53 computed as hereinafter provided, against the taxes imposed by this  
54 article, other than the taxes imposed by sections [~~one hundred eighty,~~  
55 ~~one hundred eighty-one,~~] one hundred eighty-six-a, one hundred eighty-  
56 six-e and one hundred eighty-nine of this article, for employing within  
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1 the state a qualified employee. Provided, however, the amount of credit  
2 allowed by this section against the tax imposed by section one hundred  
3 eighty-four of this article shall be the excess of the credit computed  
4 under this section over the amount of credit allowed by this section  
5 against the tax imposed by section one hundred eighty-three of this  
6 article.

7 § 102. Subdivision 1 of section 190 of the tax law, as amended by  
8 section 17 of part B of chapter 58 of the laws of 2004, is amended to  
9 read as follows:

10 1. General. A taxpayer shall be allowed a credit against the tax  
11 imposed by this article[~~, other than the taxes and fees imposed by~~  
12 ~~sections one hundred eighty and one hundred eighty-one of this article,~~  
13 equal to twenty percent of the premium paid during the taxable year for  
14 long-term care insurance. In order to qualify for such credit, the  
15 taxpayer's premium payment must be for the purchase of or for continuing  
16 coverage under a long-term care insurance policy that qualifies for such  
17 credit pursuant to section one thousand one hundred seventeen of the  
18 insurance law.

19 § 103. Subdivision 5 of section 192 of the tax law is REPEALED.

20 § 104. Clauses 1 and 2 of subparagraph (A) and subparagraph (B) of  
21 paragraph (iii) of subdivision 9 of section 16-v of section 1 of chapter  
22 174 of the laws of 1968 constituting the urban development corporation  
23 act, as added by section 1 of part C of chapter 59 of the laws of 2013,  
24 is amended to read as follows:

25 (1) over fifty percent of the number of shares of stock entitling the  
26 holders thereof to vote for the election of directors or trustees is  
27 owned or controlled, either directly or indirectly, by a taxpayer  
28 subject to tax under the following provisions of the tax law: article  
29 nine-A; section one hundred eighty-three, or one hundred eighty-four [~~or~~  
30 ~~one hundred eighty-five~~] of article nine; [~~article thirty-two~~] or arti-  
31 cle thirty-three; or

32 (2) is substantially similar in operation and in ownership to a busi-  
33 ness entity (or entities) taxable or previously taxable under the

34 following provisions of the tax law: article nine-A; section one hundred  
35 eighty-three, one hundred eighty-four, former section one hundred eight-  
36 y-five or former section one hundred eighty-six of article nine; former  
37 article thirty-two; article thirty-three; article twenty-three, or would  
38 have been subject to tax under such article twenty-three (as such arti-  
39 cle was in effect on January first, nineteen hundred eighty) or the  
40 income (or losses) of which is (or was) includable under article twen-  
41 ty-two; or

42 (B) a sole proprietorship, partnership, limited partnership, limited  
43 liability company, or New York subchapter S corporation that is not  
44 substantially similar in operation and in ownership to a business entity  
45 (or entities) taxable, or previously taxable, under article nine-A of  
46 the tax law, section one hundred eighty-three, one hundred eighty-four,  
47 former section one hundred eighty-five or former section one hundred  
48 eighty-six of article nine of the tax law, former article thirty-two or  
49 article thirty-three of the tax law, article twenty-three of the tax law  
50 or which would have been subject to tax under such article twenty-three  
51 (as such article was in effect on January first, nineteen hundred  
52 eighty) or the income (or losses) of which is (or was) includable under  
53 article twenty-two of the tax law; and

54 § 105. Section 206 of the tax law, as added by chapter 69 of the laws  
55 of 1978, is amended to read as follows:

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1 § 206. Deposit and disposition of revenue. The [~~license fees,~~]  
2 taxes, percentage, interest and other charges imposed by this article  
3 shall be collected and deposited and receipts therefor issued by the  
4 [~~tax commission, except that such license fees, taxes, percentage,~~  
5 ~~interest and other charges imposed by section one hundred eighty of this~~  
6 ~~chapter shall be collected and deposited and receipts therefor issued by~~  
7 ~~the proper state officer in accordance with the provisions of subdivi-~~  
8 ~~sion two of section one hundred eighty of this chapter,~~] commissioner  
9 and all revenues so collected or received shall be deposited and  
10 disposed of pursuant to the provisions of section one hundred seventy-  
11 one-a of this chapter.

12 § 106. Subsection (a) of section 1080 of the tax law, as added by  
13 chapter 188 of the laws of 1964, is amended to read as follows:

14 (a) General.--- The provisions of this article shall apply to the  
15 administration of and the procedures with respect to the taxes imposed  
16 by articles nine [~~(except section one hundred eighty),~~ and nine-a[~~,~~  
17 ~~nine-b and nine-c~~] of this chapter for taxable years or periods ending  
18 on or after December thirty-first, nineteen hundred sixty-four.

19 § 107. Subdivisions (a) and (c) of section 1809 of the tax law, as  
20 added by section 1 of subpart A of part S of chapter 57 of the laws of  
21 2010, are amended to read as follows:

22 (a) Any person who, with intent to evade payment of any tax imposed  
23 under article nine [~~(other than under section one hundred eighty or one~~  
24 ~~hundred eighty-one)], nine-A, thirteen, [~~thirty-two,~~] thirty-three or  
25 thirty-three-A of this chapter, fails to file a return or report for  
26 three consecutive taxable years shall be guilty of a class E felony,  
27 provided that such person had an unpaid tax liability, in excess of the  
28 threshold amount with respect to each of the three consecutive taxable  
29 years. The threshold amount in the case of a taxable year under article  
30 nine-A of this chapter ending after June thirtieth, nineteen hundred  
31 eighty-nine is the applicable fixed dollar minimum prescribed under  
32 paragraph (d) of subdivision one of section two hundred ten of this  
33 chapter. In the event such fixed dollar minimum is less than two hundred  
34 fifty dollars, the threshold amount in the case of such taxable year is  
35 two hundred fifty dollars. In all other cases the threshold amount is  
36 two hundred fifty dollars.~~

37 (c) As used in this section, the terms "return" and "report" shall  
38 mean a return or report required under section one hundred ninety-two,  
39 two hundred eleven, two hundred ninety-four, [~~fourteen hundred sixty-~~



40 ~~two,~~] fifteen hundred fifteen or fifteen hundred fifty-four of this  
41 chapter. It shall not include any return or report referred to in  
42 section one hundred ninety-seven-a, two hundred thirteen-a, [~~fourteen~~  
43 ~~hundred sixty~~] or fifteen hundred thirteen of this chapter.

44 § 108. Paragraphs (d), (e), (g), (h) and (q) of section 104-A of the  
45 business corporation law, subdivisions (d), (e) and (q) as amended by  
46 chapter 166 of the laws of 1991, subdivision (g) as added by chapter 591  
47 of the laws of 1982, and subdivision (h) as amended by chapter 117 of  
48 the laws of 1986, are amended to read as follows:

49 (d) For filing a certificate of incorporation pursuant to section four  
50 hundred two of this chapter, one hundred twenty-five dollars [~~plus the~~  
51 ~~tax on shares prescribed by section one hundred eighty of the tax law~~].

52 (e) For filing a certificate of amendment pursuant to section eight  
53 hundred five of this chapter, sixty dollars [~~plus the tax on shares~~  
54 ~~prescribed by section one hundred eighty of the tax law if such certifi-~~  
55 ~~cate shows a change of shares~~].

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1 (g) For filing a restated certificate of incorporation pursuant to  
2 section eight hundred seven of this chapter, sixty dollars [~~plus the tax~~  
3 ~~on shares prescribed by section one hundred eighty of the tax law if~~  
4 ~~such certificate shows a change of shares~~].

5 (h) For filing a certificate of merger or consolidation pursuant to  
6 section nine hundred four of this chapter, or a certificate of exchange  
7 pursuant to section nine hundred thirteen (other than paragraph (g) of  
8 section nine hundred thirteen) of this chapter, sixty dollars [~~plus the~~  
9 ~~tax on shares prescribed by section one hundred eighty of the tax law if~~  
10 ~~such certificate shows a change of shares~~].

11 (q) For filing a certificate of incorporation by a professional  
12 service corporation pursuant to section fifteen hundred three of this  
13 chapter, one hundred twenty-five dollars [~~plus the tax on shares~~  
14 ~~prescribed by section one hundred eighty of the tax law~~].

15 § 109. Subdivision 8 of section 7-a of the general associations law,  
16 as added by chapter 575 of the laws of 1964, is amended to read as  
17 follows:

18 8. The provisions of section ninety-six of the executive law prescrib-  
19 ing the fee to be collected by the department of state for filing a  
20 certificate of incorporation under the business corporation law shall  
21 apply to the certificate of incorporation to be filed pursuant to this  
22 section[~~, and the organization tax payable under section one hundred~~  
23 ~~eighty of the tax law in respect of a corporation formed under the busi-~~  
24 ~~ness corporation law shall be paid before the department of state shall~~  
25 ~~file such certificate of incorporation~~].

26 § 110. Paragraphs 1 and 2 of subdivision (l) of section 11-640 of the  
27 administrative code of the city of New York, as amended by section 3 of  
28 part R of chapter 59 of the laws of 2012, is amended to read as follows:

29 (1) Notwithstanding anything to the contrary contained in this section  
30 other than subdivision (m) of this section, a corporation that was in  
31 existence before January first, two thousand [~~twelve~~] fourteen and was  
32 subject to tax under subchapter two of this chapter for its last taxable  
33 year beginning before January first, two thousand [~~twelve~~] fourteen,  
34 shall continue to be taxable under such subchapter for all taxable years  
35 beginning on or after January first, two thousand [~~twelve~~] fourteen and  
36 before January first, two thousand [~~fifteen~~] seventeen. The preceding  
37 sentence shall not apply to any taxable year during which such corpo-  
38 ration is a banking corporation described in paragraphs one through  
39 eight of subdivision (a) of this section. Notwithstanding anything to  
40 the contrary contained in this section other than subdivision (m) of  
41 this section, a banking corporation or corporation that was in existence  
42 before January first, two thousand [~~twelve~~] fourteen and was subject to  
43 tax under this subchapter for its last taxable year beginning before  
44 January first, two thousand [~~twelve~~] fourteen, shall continue to be  
45 taxable under this subchapter for all taxable years beginning on or

46 after January first, two thousand [~~twelve~~] fourteen and before January  
47 first, two thousand [~~fifteen~~] seventeen only if the corporation is a  
48 banking corporation as defined in subdivision (a) of this section or the  
49 corporation satisfies the requirements for a corporation to elect to be  
50 taxable under this subchapter. Provided further, that nothing in this  
51 subdivision shall prohibit a corporation that elected pursuant to subdivi-  
52 sion (d) of this section to be taxable under subchapter two of this  
53 chapter from revoking that election in accordance with subdivision (d)  
54 of this section. For purposes of this paragraph, a corporation shall be  
55 considered to be subject to tax under subchapter two of this chapter for  
56 a taxable year if such corporation was not a taxpayer but was properly  
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1 included in a combined report filed pursuant to subdivision four of  
2 section 11-605 of this chapter for such taxable year and a corporation  
3 shall be considered to be subject to tax under this subchapter for a  
4 taxable year if such corporation was not a taxpayer but was properly  
5 included in a combined report filed pursuant to subdivision (f) or (g)  
6 of section 11-646 of this part for such taxable year. A corporation that  
7 was in existence before January first, two thousand [~~twelve~~] fourteen  
8 but first becomes a taxpayer in a taxable year beginning on or after  
9 January first, two thousand [~~twelve~~] fourteen and before January first,  
10 two thousand [~~fifteen~~] seventeen, shall be considered for purposes of  
11 this paragraph to have been subject to tax under subchapter two of this  
12 chapter for its last taxable year beginning before January first, two  
13 thousand [~~twelve~~] fourteen if such corporation would have been subject  
14 to tax under such subchapter for such taxable year if it had been a  
15 taxpayer during such taxable year. A corporation that was in existence  
16 before January first, two thousand [~~twelve~~] fourteen but first becomes a  
17 taxpayer in a taxable year beginning on or after January first, two  
18 thousand [~~twelve~~] fourteen and before January first, two thousand  
19 [~~fifteen~~] seventeen, shall be considered for purposes of this paragraph  
20 to have been subject to tax under this subchapter for its last taxable  
21 year beginning before January first, two thousand [~~twelve~~] fourteen if  
22 such corporation would have been subject to tax under this subchapter  
23 for such taxable year if it had been a taxpayer during such taxable  
24 year.

25 (2) Notwithstanding anything to the contrary contained in this section  
26 other than subdivision (m) of this section, a corporation formed on or  
27 after January first, two thousand [~~twelve~~] fourteen and before January  
28 first, two thousand [~~fifteen~~] seventeen may elect to be subject to tax  
29 under this subchapter or under subchapter two of this chapter for its  
30 first taxable year beginning on or after January first, two thousand  
31 [~~twelve~~] fourteen and before January first, two thousand [~~fifteen~~]  
32 seventeen in which either (i) sixty-five percent or more of its voting  
33 stock is owned or controlled, directly or indirectly by a financial  
34 holding company, provided the corporation whose voting stock is so owned  
35 or controlled is principally engaged in activities that are described in  
36 section 4(k)(4) or 4(k)(5) of the federal bank holding company act of  
37 nineteen hundred fifty-six, as amended and the regulations promulgated  
38 pursuant to the authority of such section or (ii) it is a financial  
39 subsidiary. An election under this paragraph may not be made by a corpo-  
40 ration described in paragraphs one through eight of subdivision (a) of  
41 this section or in subdivision (e) of this section. In addition, an  
42 election under this paragraph may not be made by a corporation that is a  
43 party to a reorganization, as defined in subsection (a) of section 368  
44 of the internal revenue code of 1986, as amended, of a corporation  
45 described in paragraph one of this subdivision if both corporations were  
46 sixty-five percent or more owned or controlled, directly or indirectly  
47 by the same interests at the time of the reorganization.

48 An election under this paragraph must be made by the taxpayer on or  
49 before the due date for filing its return (determined with regard to  
50 extensions of time for filing) for the applicable taxable year. The

51 election to be taxed under subchapter two of this chapter shall be made  
52 by the taxpayer by filing the return required pursuant to subdivision  
53 one of section 11-605 of this chapter and the election to be taxed under  
54 this subchapter shall be made by the taxpayer by filing the return  
55 required pursuant to subdivision (a) of section 11-646 of this part. Any  
56 election made pursuant to this paragraph shall be irrevocable and shall  
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1 apply to each subsequent taxable year beginning on or after January  
2 first, two thousand [~~twelve~~] fourteen and before January first, two  
3 thousand [~~fifteen~~] seventeen, provided that the stock ownership and  
4 activities requirements described in subparagraph (i) of this paragraph  
5 are met or such corporation described in subparagraph (ii) of this para-  
6 graph continues as a financial subsidiary.

7 § 111. Subparagraph (iv) of paragraph 2 of subdivision (f) of section  
8 11-646 of the administrative code of the city of New York, as amended by  
9 section 4 of part R of chapter 59 of the laws of 2012, is amended to  
10 read as follows:

11 (iv) (A) Notwithstanding any provision of this paragraph, any bank  
12 holding company exercising its corporate franchise or doing business in  
13 the city may make a return on a combined basis without seeking the  
14 permission of the commissioner with any banking corporation exercising  
15 its corporate franchise or doing business in the city in a corporate or  
16 organized capacity sixty-five percent or more of whose voting stock is  
17 owned or controlled, directly or indirectly, by such bank holding compa-  
18 ny, for the first taxable year beginning on or after January first, two  
19 thousand and before January first, two thousand [~~fifteen~~] seventeen  
20 during which such bank holding company registers for the first time  
21 under the federal bank holding company act, as amended, and also elects  
22 to be a financial holding company. In addition, for each subsequent  
23 taxable year beginning after January first, two thousand and before  
24 January first, two thousand [~~fifteen~~] seventeen, any such bank holding  
25 company may file on a combined basis without seeking the permission of  
26 the commissioner with any banking corporation that is exercising its  
27 corporate franchise or doing business in the city and sixty-five percent  
28 or more of whose voting stock is owned or controlled, directly or indi-  
29 rectly, by such bank holding company if either such banking corporation  
30 is exercising its corporate franchise or doing business in the city in a  
31 corporate or organized capacity for the first time during such subse-  
32 quent taxable year, or sixty-five percent or more of the voting stock of  
33 such banking corporation is owned or controlled, directly or indirectly,  
34 by such bank holding company for the first time during such subsequent  
35 taxable year. Provided however, for each subsequent taxable year begin-  
36 ning after January first, two thousand and before January first, two  
37 thousand [~~fifteen~~] seventeen, a banking corporation described in either  
38 of the two preceding sentences which filed on a combined basis with any  
39 such bank holding company in a previous taxable year, must continue to  
40 file on a combined basis with such bank holding company if such banking  
41 corporation, during such subsequent taxable year, continues to exercise  
42 its corporate franchise or do business in the city in a corporate or  
43 organized capacity and sixty-five percent or more of such banking corpo-  
44 ration's voting stock continues to be owned or controlled, directly or  
45 indirectly, by such bank holding company, unless the permission of the  
46 commissioner has been obtained to file on a separate basis for such  
47 subsequent taxable year. Provided further, however, for each subsequent  
48 taxable year beginning after January first, two thousand and before  
49 January first, two thousand [~~fifteen~~] seventeen, a banking corporation  
50 described in either of the first two sentences of this clause which did  
51 not file on a combined basis with any such bank holding company in a  
52 previous taxable year, may not file on a combined basis with such bank  
53 holding company during any such subsequent taxable year unless the  
54 permission of the commissioner has been obtained to file on a combined  
55 basis for such subsequent taxable year.

1 (B) Notwithstanding any provision of this paragraph other than clause  
2 (A) of this subparagraph, the commissioner may not require a bank hold-  
3 ing company which, during a taxable year beginning on or after January  
4 first, two thousand and before January first, two thousand [~~fifteen~~  
5 seventeen], registers for the first time during such taxable year under  
6 the federal bank holding company act, as amended, and also elects to be  
7 a financial holding company, to make a return on a combined basis for  
8 any taxable year beginning on or after January first, two thousand and  
9 before January first, two thousand [~~fifteen~~ seventeen] with a banking  
10 corporation sixty-five percent or more of whose voting stock is owned or  
11 controlled, directly or indirectly, by such bank holding company.

12 § 112. Severability. If any provision of this act shall for any reason  
13 be finally adjudged by any court of competent jurisdiction to be inval-  
14 id, such judgment shall not affect, impair, or invalidate the remainder  
15 of this act, but shall be confined in its operation to the provision  
16 directly involved in the controversy in which such judgment shall have  
17 been rendered. It is hereby declared to be in the intent of the legisla-  
18 ture that this act would have been enacted even if such invalid  
19 provision had not been included in this act. Provided further, if a  
20 court of final, competent jurisdiction adjudges the tax rates imposed on  
21 qualified New York manufacturers to be invalid, qualified New York  
22 manufacturers shall be subject to the same tax rates as all other  
23 taxpayers subject to tax under article 9-A of the tax law. Provided  
24 further, if a court of final, competent jurisdiction adjudges the tax  
25 rate of the metropolitan transportation business tax surcharge imposed  
26 under section 209-B of the tax law to be invalid, the rate of such  
27 surcharge shall be twenty-seven and one tenth percent. Provided further,  
28 if a court of final, competent jurisdiction adjudges that any of the tax  
29 credits provided by this act to be invalid, such credit or credits shall  
30 be deemed repealed and shall be of no force and effect as to any taxpay-  
31 ers.

32 § 113. This act shall take effect January 1, 2015 and shall apply to  
33 taxable years commencing on or after such date; provided that the amend-  
34 ments to section 25 of the tax law made by section forty-three of this  
35 act shall not affect the repeal of such section and shall be deemed  
36 repealed therewith; provided, further, that the amendments to the open-  
37 ing paragraph of subdivision (a), subparagraph (C) of paragraph 2 of  
38 subdivision (e) and subdivision (f) of section 35 of the tax law made by  
39 section fifty of this act shall not affect the repeal of such provisions  
40 and shall be deemed repealed therewith; provided, further, that the  
41 amendments to clause (xxxii) of subparagraph (B) of paragraph 1 of  
42 subsection (i) of section 606 of the tax law made by section sixty-eight  
43 of this act shall not affect the repeal of such clause and shall be  
44 deemed repealed therewith; provided, further, that the amendments to  
45 clause (xxxiii) of subparagraph (B) of paragraph 1 of subsection (i) of  
46 section 606 of the tax law made by section sixty-eight of this act shall  
47 not affect the repeal of such clause and shall be deemed repealed there-  
48 with; and provided, further, that the amendments to clause (ii) of  
49 subparagraph (B) of paragraph 2 of subsection (q), paragraph 3 of  
50 subsection (s) and the closing paragraph of paragraph 1 of subsection  
51 (t) of section 1085 of the tax law made by section eighty-one of this  
52 act shall not affect the repeal of such provisions and shall be deemed  
53 repealed therewith.